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# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**287(g): CROSS-DELEGATING STATE AND LOCAL LAW  
ENFORCEMENT OFFICERS WITH FEDERAL  
IMMIGRATION AUTHORITY — HOMELAND SECURITY  
REMEDY OR RUE?**

by

Jonathan L. Lines

December 2008

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**287(g): CROSS-DELEGATING STATE AND LOCAL LAW ENFORCEMENT  
OFFICERS WITH FEDERAL IMMIGRATION AUTHORITY — HOMELAND  
SECURITY REMEDY OR RUE?**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

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## **ABSTRACT**

As a result of the federal government's shortcomings in thwarting illegal immigration, state and local law enforcement agencies are now largely shouldering the problem of criminal activity associated with illegal immigration. Section 287(g) of the INA allows state and local police to actively participate in immigration enforcement, but has raised concerns about how to balance public safety with concerns of a "chilling effect" on the immigrant community. This thesis surveyed current and prospective 287(g) participants in order to develop a model for voluntary local, state and federal immigration enforcement collaboration. The proposed model confines immigration enforcement to a small group of select officers representing agencies that volunteer based on the needs of their communities; ICE agents would be active participants. The enforcement would target serious crimes that support illegal immigration such as alien smuggling, fraudulent documents, transnational gang activity and drug trafficking. Enforcement efforts would be supplemented by community outreach and efforts to mitigate the chilling effect that deters many state and local police from engaging in immigration enforcement.



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To my fellow law enforcement associates at all levels of government, I am honored to serve by your side. Few will ever really know the dangers you face and the sacrifices you make to keep our nation's communities safe. You are truly honorable people.

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## I. INTRODUCTION

The terrorist attacks of 9/11 forced the nation's law enforcement community to reconsider its position regarding state and local<sup>1</sup> involvement in immigration enforcement. State and local police have a significant impact in thwarting crimes coming from transnational sources. These efforts include detecting crimes such as international drug and human trafficking, identity theft, fraud, and a multitude of others. Yet in cities where high levels of these crimes are committed by illegal aliens, the police cannot use the most obvious tool to apprehend them: their immigration status.<sup>2</sup> Illegally crossing American borders is a gateway crime that can lead to other more serious offenses. To this end, many state and local police departments have joined forces with the federal government to participate in a program codified in Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), supplementing the existing Immigration and Nationality Act (INA).<sup>3</sup> 287(g) went into affect September 30, 1996, permitting designated state and local officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement (MOA) authorizing the

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<sup>1</sup> For the purpose of this paper, "state and local law enforcement" refers to all law enforcement personnel under the jurisdiction of the various states, tribes, cities and counties.

<sup>2</sup> Heather MacDonald, "The Illegal Alien Crime Wave," *City Journal* (New York: Manhattan Institute, Winter 2004), n.p.

<sup>3</sup> The Immigration and Nationality Act, or INA, was created in 1952. Before the INA, a variety of statutes governed immigration law but were not organized in one location. The McCarran-Walter bill of 1952, Public Law No. 82-414, collected and codified many existing provisions and reorganized the structure of immigration law. The Act has been amended many times over the years, but is still the basic body of immigration law. The INA is divided into titles, chapters, and sections. Although it stands alone as a body of law, the Act is also contained in the United States Code (U.S.C.). The code is a collection of all the laws of the United States. It is arranged in fifty subject titles by general alphabetic order. Title 8 of the U.S. Code is but one of the fifty titles and deals with "Aliens and Nationality". When browsing the INA or other statutes, one will often see reference to the U.S. Code citation. For example, Section 208 of the INA deals with asylum, and is also contained in 8 U.S.C. 1158. Although it is correct to refer to a specific section by either its INA citation or its U.S. code, the INA citation is more commonly used. U.S. Immigration and Citizenship Services. "Immigration and Nationality Act." <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD> (accessed September 11, 2008).

secretary of the U.S. Department of Homeland Security (DHS) to negotiate with state and local law enforcement agencies to operate under the supervision of U.S. Immigration and Customs Enforcement (ICE) <sup>4</sup> officers.<sup>5</sup>

An estimated ten to twenty million<sup>6</sup> aliens<sup>7</sup> have illegally entered the U.S. and live in the shadows of society. The fact that such a marked discrepancy exists in actual estimates of how many illegal aliens are in the country is reason alone for concern in our

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<sup>4</sup> U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities. DHS ICE Office of Investigations uses its legal authority to investigate issues such as immigration crime, human rights violations, and human smuggling; narcotics, weapons and other types of smuggling; and financial crimes, cyber crime and export enforcement issues. U.S. Immigration and Customs Enforcement, News Release “*Officers from two Florida law enforcement agencies begin 287 (g) immigration enforcement training. Rigorous 4-week training at Federal Law Enforcement Training Center in Charleston, SC,*” (Washington D.C.: ICE, July 22, 2008), 1. <http://www.ice.gov/pi/nr/0807/080722miami.htm> (accessed August 3, 2008).

<sup>5</sup> Section 287(g), Immigration and Nationality Act; Delegation of Immigration Authority June 22, 2007, <http://www.ice.gov/pi/news/factsheets/070622factsheet287gprover.htm> (accessed September 13, 2008).

<sup>6</sup> Estimates in the literature pertaining to the number of illegal aliens currently residing in the U.S. vary between ten and twenty million. No exact determinations can be made due to the clandestine nature of illegal aliens, who avoid detection.

<sup>7</sup> For the purpose of this paper, any foreign national who has entered the country without being inspected by an immigration officer, or entered the country legally on a temporary visa yet overstayed or somehow violated the terms of that visa, will be referred to as an “illegal alien.” Also known as an “undocumented alien” or “unauthorized alien,” is an alien who has entered the U.S. illegally and is deportable if apprehended, or an alien who entered the U.S. legally but who has fallen “out of status” and is deportable. Although some find the term pejorative, the term “undocumented immigrant” is misleading because, based on statutory language, “immigrant” connotes having legally migrated to the U.S. Many aliens enter the U.S. with nonimmigrant visas allowing them to enter the U.S. in one of several different categories, which correspond to the purpose for which the nonimmigrant is being admitted to the U.S. For example, a foreign student will usually enter the U.S. on an F-1 visa, a visitor for business on a B-1 visa, and a visitor for pleasure, a “tourist,” on a B-2 visa only valid for up to six months at a time (18 of the 19 September 11<sup>th</sup> hijackers entered the U.S. legally with B-2 visas. One other entered with an F-1 visa), an exchange visitor (including students, teachers, researchers, trainees, alien physicians, au pairs, and others) on a J-1 visa, a diplomat on an A or G visa, etc. The categories of nonimmigrant visas correspond exactly to the “nonimmigrant status” assigned to each nonimmigrant upon his arrival, based on the purpose for which the nonimmigrant was admitted to the United States. For example, a foreign student who enters the U.S. on an F-1 visa is considered to be in F-1 student status after he enters the U.S.; he will remain in that status until he violates the conditions prescribed for that status, or until he changes to another nonimmigrant or immigrant status with U.S. Citizenship and Immigration Services (USCIS) permission, or until he leaves the U.S. Among other things, illegal aliens cannot vote, receive social services from federally funded programs, social security benefits, or hold U.S. passports. Illegal aliens are subject to detainment and deportation at any time, as are legal aliens (Lawful Permanent Residents, “Green Card” holders) if they commit and are convicted of a crime. In many cases, however, unless an illegal alien has committed a crime and been convicted, most are not detained or removed from the U.S. simply because they cannot be identified as illegal aliens.

current national security climate. Knowing who enters the U.S., where they came from, and why they are here is critical to safeguarding our nation. While the vast majority of illegal aliens come to the U.S. to escape economic deprivation and seek the benefits that America affords, some of these individuals commit crimes ranging from identity theft to the tragic events of 9/11.<sup>8</sup> Stopping terrorism, and making America safer in general, is intertwined with effective and innovative enforcement of U.S. immigration laws. Identifying those who breach our borders is a challenge that continues to confront our nation — a problem that has spilled into America’s communities, large and small. Each state ultimately bears the burden of failed border security and chronically under-funded interior enforcement efforts.<sup>9</sup> 287(g) delegation is a viable remedy to effectively address pervasive transnational threats. Participating agencies must be prepared to address conflicting and competing elements including law, culture, finite resources and politics. This thesis proposes a collaborative local, state and federal enforcement strategy and operational model considering these elements.

## **A. CHAPTER BY CHAPTER SUMMARY**

Chapter I introduces the controversial topic of state and local involvement in immigration enforcement by participation in the 287(g) program, which authorizes local police to perform federal immigration enforcement functions. The 9/11 Commission recognizes the growing role that state and local agencies play in this post-9/11 climate. This thesis will explain why state and local law enforcement is intertwined with terrorism prevention, as well as how such enforcement safeguards our communities. Crimes committed by foreign nationals — many exploited by terrorists — pose ideological, legal and resource challenges to state and local officers who safeguard our communities, as well as to policy makers who struggle with the politics and human dimension that

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<sup>8</sup> In the aftermath of 9/11, it was learned that five of the 19 hijackers had violated federal immigration laws while they were in the United States. In other words, they were illegal aliens. In the months before the attack, four of those five terrorists were stopped by local police for speeding. All four could have been arrested—if the police officers had realized that they were illegal aliens.

<sup>9</sup> Jon Feere and Jessica Vaughan, Center for Immigration Studies, “Taking Back the Streets: ICE and Local Law Enforcement Target Immigrant Gangs,” September 2008, <http://www.cis.org/taxonomy/term/12> (accessed October 26, 2008)



immigration enforcement presents. A review and analysis of the relevant literature is given, research questions are posed, and methodology for exploring the viability and practicality of 287(g) for interested agencies is described. This research focuses primarily on instituting 287(g) and supporting programs in Utah, but can also be applied in other states.

Chapter II explains that many state and local agencies are deterred from immigration enforcement due to confusion about state versus federal statutory authority. Federal legislation is discussed, introducing the concept of “coercive” versus “permissive” approaches in immigration enforcement. It is surmised that a voluntary or permissive approach is more conducive to applying immigration enforcement at the state and local levels, as the need and desire for participation varies from community to community. A brief account of Utah’s pre-9/11 brush with the potential to initiate 287(g) is offered, along with the current political climate and Utah legislative proposals relating to immigration enforcement. Politics and ideological discussion embroiling the immigration debate are likened to the “Broken Windows” theory posed by criminologists James Q. Wilson and George L. Kelling.<sup>10</sup>

Chapter III delineates the responsibilities and resource limitations of the ICE Office of Investigations (OI) and the Detention and Removal Office (DRO). A sampling of immigration-related crimes in Utah and their national security implications is offered as an argument for closer state, local and federal collaboration and cooperation in addressing the burgeoning crimes that support the infrastructure of illegal immigration.

Chapter IV explores strategic planning in anticipation of and during 287(g) participation, or immigration enforcement in general. The “chilling effect” relating to state and local involvement in immigration enforcement is discussed, along with ways to mitigate the potential. The concerns of a prominent immigration advocate are presented. Establishing trust and credibility is discussed, along with strategies for outreach and communication with the immigrant community and those who oppose the program.

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<sup>10</sup> James Q. Wilson and George L. Kelling, “Broken Windows: The Police and Neighborhood Safety,” *Atlantic Monthly* March 1982. [http://www.manhattan-institute.org/pdf/\\_atlantic\\_monthly-broken\\_windows.pdf](http://www.manhattan-institute.org/pdf/_atlantic_monthly-broken_windows.pdf) (accessed June 3, 2008).

Concern regarding the opportunity for 287(g) to be used by local police to racially profile and discriminate is discussed, along with a mechanism for redress and complaints when allegations arise.

Chapter V provides analysis of the respondents surveyed about 287(g) implementation. Strategy for limiting the scope and focus for a mutually agreeable 287(g) approach is presented. Arizona's current Illegal Immigration Prevention and Apprehension Co-op Team (IIMPACT) is presented as a viable model to emulate. Additionally, ICE-sponsored Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) programs are introduced as supplementary enforcement programs available to state and local agencies in lieu of 287(g) participation.

Chapter VI stresses the need for state, local and federal collaboration in Utah to counter transnational threats. The need for political and fiscal support is discussed, along with a proposed team concept and a mechanism for those agencies that choose to participate in immigration enforcement with ICE. "Utah Anti-Immigration Crime Team" (UACT) is posed as a prototype for such an enforcement venture. Potential cooperative investigative functions for UACT are delineated in furtherance of promoting close multi-jurisdictional, multi-agency cooperation.

Chapter VII concludes with research findings and questions posed in chapter I. Research objectives are synopsized, and a middle-ground approach to countering immigration-related crimes is offered to safeguard our communities and nation.

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## **II. STATE AND LOCAL PARTICIPATION IN IMMIGRATION ENFORCEMENT**

The “growing role of state and local law enforcement” in counterterrorism efforts was based on analysis emerging from the 9/11 Commission’s report.<sup>11</sup> Immigration fraud and other violations were used by the terrorists to further their scheme which resulted in the deaths of close to 3000 people on September 11, 2001. Many argue that immigration matters are inappropriately attached to national security issues. This research illuminates the link between terrorism and crimes often committed by illegal aliens. Many of these criminal schemes committed by and catering to illegal aliens are exploited by terrorists as they plot against the U.S.

Porous borders and lax interior enforcement policies keep America vulnerable to another attack. Policy makers should be wary of loosening the mechanism by which foreign nationals enter and remain in our country. Too often, decision makers, civic leaders and even law enforcement leaders weed out the politically unsavory aspects of immigration to avoid evoking criticism from certain segments of their constituency or others to whom they hope to remain endeared. Politicians and religious groups have a vested interest in not enforcing interior immigration laws. Such groups stand to receive benefits from a larger alien population — one for votes, the other for potential converts.<sup>12</sup> Fair, balanced and objective analysis of the connection between illegal immigration and national security is often lost in rhetoric embroiling the immigration enforcement debate. This paper makes no claim that state and local police are to blame for the events of 9/11, but argues that state and local officers have a significant role to play in detecting and deterring threats from foreign sources to ensure our nation’s security in this post-9/11

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<sup>11</sup> The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States (New York: W.W. Norton & Company, 2004), 390.

<sup>12</sup> George Weissinger, Ph.D, “The Illegal Alien Problem: Enforcing Immigration Laws.” Department of Behavioral Science-Criminal Justice Program, New York Institute of Technology. November 7, 2003. [http://www.immigration-usa.com/george\\_weissinger.html](http://www.immigration-usa.com/george_weissinger.html) (accessed November 22, 2208).

environment where the U.S. remains a target.<sup>13</sup> As illegal aliens make their way through U.S. borders and into America's interior, they quickly become a problem that state and local police cannot ignore.

Many political leaders minimize or altogether ignore how crime related to illegal immigration impacts communities throughout the country. The focus on humanitarian issues and the dynamics of family breakups when deportations occur (an unavoidable consequence of those who break the law), along with arguments for the cheap labor provided by illegal aliens, has pushed the public safety and national security concerns to the rear. Policy makers downplay the vulnerability posed by our porous borders. As stated by journalist and political analyst heather MacDonald,

Many open-borders boosters are hawks in the war on terror. But since many of the methods that maintain the border's integrity overall are essential to keeping terrorists out of the country, these boosters should explain why they think we can wink at immigration-border violations and still protect the public against foreign enemies. Either we should give up on keeping immigration lawbreakers *and* terrorists from entering the country, or we should remain vigilant against both, since border security is key to terror protection.<sup>14</sup>

Likewise, Kris Kobach, a renowned scholar, advocates strongly for local police to engage in immigration enforcement. Kobach states, "it is...clear that the potential for closer cooperation with state and local law enforcement has not been fully exploited. Consequently, there has been a cost to the national security of the United States, as well as to the enforcement of immigration laws."<sup>15</sup>

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<sup>13</sup> As clarification, this researcher makes no assertion that interior enforcement is a substitute for border enforcement. This paper takes the position that state and local police have become the victims of failed border security policies and are now forced to consider local strategies to remedy the criminal elements that are settling in their communities. Voluntary assistance of state and local police can significantly impact criminal aliens and other foreign threats that have averted detection at the borders and operate in the nation's interior. The fact that state and local police are now forced to make policy decisions about this complex undertaking warrants such research if homeland security efforts are to be optimized.

<sup>14</sup> MacDonald, "The Illegal Alien Crime Wave."

<sup>15</sup> Kris W. Kobach. Center for Immigration Studies, "State and Local Authority to Enforce Immigration Law: A Unified Approach for Stopping Terrorists," June 2004, <http://www.cis.org/articles/2004/back604.html> (accessed August 29, 2008).

A 2006 report prepared by the House Subcommittee on Homeland Security illuminates the nexus between illegal immigration and national security. The report was generated after several months of investigating the violence and criminal activity linked to border incursions. The report, entitled “A Line in The Sand: Confronting the Threat at the Southwest Border,” provides intelligence about Mexican drug cartels operating along the southwest border that are more sophisticated and dangerous than any other organized criminal enterprise.<sup>16</sup> The Mexican cartels, and the smuggling rings and gangs they leverage, control routes into the U.S. and pose substantial challenges to U.S. law enforcement. The cartels operate along the border with military grade weapons, technology and intelligence, and their own paramilitary enforcers. Human smugglers coordinate with the drug cartels, paying a fee to use the cartels’ safe smuggling routes into the U.S. These cartels are moving to diversify their criminal enterprises to include the increasingly lucrative human smuggling trade.<sup>17</sup> U.S. law enforcement has established that coordination between Mexican drug cartels, human smuggling networks and U.S.-based gangs is on the rise. Intelligence also indicates that terrorist organizations are enlisting the services of these Mexican smuggling organizations.<sup>18</sup> The human smuggling business is lucrative and competitive. It is not an unrealistic stretch to posit that those who profit by smuggling humans into the U.S. would also smuggle materials used by terrorist to inflict mass casualties.

The cartels use street and prison gangs located in the U.S. as their distribution networks. In the U.S., gang members operate as surrogates and enforcers for the cartels. Murders and kidnappings on the both sides of the border have significantly increased in recent years, and their violence and criminal enterprises have migrated into America’s interior.<sup>19</sup> Many criminals from Latin America conduct their business here using

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<sup>16</sup> *A Line in the Sand: Confronting the Threat at the Southwest Border*, House Committee on Homeland Security, Subcommittee on Investigations, Michael T. McCaul, Chairman <http://www.house.gov/mccaul/pdf/Investigaions-Border-Report.pdf> (accessed October 3, 2008).

<sup>17</sup> Ibid.

<sup>18</sup> Pauline Arrillaga and Olga R. Rodriguez, “Smugglers Carry People With Links to Terror into U.S.,” *San Diego Union Tribune*, July 3, 2005, [http://www.signonsandiego.com/uniontrib/20050703/news\\_1n3tjborder.html](http://www.signonsandiego.com/uniontrib/20050703/news_1n3tjborder.html) (accessed October 31, 2008).

<sup>19</sup> *A Line in the Sand: Confronting the Threat at the Southwest Border*.

American democratic tenets to cloak their illegal enterprise — much like the Islamist radicals who despise western civilization yet choose to live in that very environment to more freely operate. Foreign nationals who belong to these gangs ignore federal immigration laws, regularly enter the U.S. illegally, and travel to the nation’s interior cities to join with other gang members to participate in criminal activity. Dangerous individuals are coming across the border to escape their criminal pasts and to seek refuge in the U.S. According to the House report, many of the operatives of cartels in Mexico actually live in the U.S. to escape apprehension in Mexico. The triple threat of drug smuggling, illegal and unknown crossers, and rising violence is a reality facing U.S. communities.<sup>20</sup> This new generation of sophisticated and violent transnational crime presents significant challenges to U.S. law enforcement officers, who require the enforcement tools necessary to counter the threat that is not confined to border states.

In sum, the Subcommittee report finds that:

1. Drug trafficking organizations and human smuggling networks are proliferating and strengthening their control of key corridors along our nation’s southwest border and operating in Mexico and the U.S.
2. The Mexican drug cartels wield substantial control over the Mexican-U.S. border. Law enforcement officials at the border agree that very little crosses the respective cartel territories, or “plazas,” along the southwest border without cartel knowledge, approval, and financial remuneration.
3. These criminal organizations and networks are highly sophisticated and organized, operating with military style weapons and technology, utilizing counter-surveillance techniques, and acting aggressively against both law enforcement and competitors.
4. Drug trafficking organizations, human smuggling networks and U.S.-based gangs are increasingly coordinating with one another to achieve criminal objectives.

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<sup>20</sup> *A Line in the Sand: Confronting the Threat at the Southwest Border.*

5. Federal, state and local enforcement report new and ever-increasing levels of ruthlessness and violence associated with these criminal organizations, which are increasingly spilling across the border into the U.S. and moving into local communities.
6. Each year, hundreds of illegal aliens from countries known to harbor terrorists or promote terrorism are routinely encountered and apprehended attempting to enter the U.S. illegally via the U.S./Mexican border.
7. The existing resources of the U.S. Border Patrol and local law enforcement agencies must be enhanced to counter the cartels and the criminal networks they leverage to circumvent law enforcement.<sup>21</sup>

This report illuminates the need for increased vigilance in detecting and deterring the encroaching criminal element coming from south of the U.S. border — an element that has facilitated terrorism and is becoming increasingly harmful to the nation.

#### **A. CRIME PREVENTION IS TERRORISM PREVENTION**

Realizing that “crime prevention is terrorism prevention” is critical to the Homeland Security mission.<sup>22</sup> As stated by Inspector Matthew J. Simeone, Jr., a twenty-two-year veteran of the Nassau County Police Department who is presently assigned as the county’s Gang Task Force coordinator and commanding officer of community affairs, “Many of the same activities that help to prevent crime also help to prevent terrorism.”<sup>23</sup> Inspector Simeone further explains his assertion:

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<sup>21</sup> *A Line in the Sand: Confronting the Threat at the Southwest Border*.

<sup>22</sup> Sheriff Larry Campbell, Leon County, Florida, as quoted in “Crime Prevention Can Spur and Support Homeland Security in Neighborhoods and Communities,” *Topics in Crime Prevention*, National Crime Prevention Council (Winter 2003): 1, [http://www.ncpc.org/cms/cms-upload/ncpc/File/topics\\_cp\\_hs.pdf](http://www.ncpc.org/cms/cms-upload/ncpc/File/topics_cp_hs.pdf). (accessed October 26, 2008).

<sup>23</sup> Mathew J. Simeone, Jr. “Integrating Virtual Public-Private Partnerships into Local Law Enforcement for Enhanced Intelligence-Led Policing.” *Homeland Security Affairs Journal*. Supplement No. 2:2008. <http://www.hsaj.org/?special:fullarticle=supplement.2.8> (accessed October 26, 2008).



The nexus between crime and terrorism has been well-documented. One example is the multi-billion dollar illegal drug trade linked back to Afghanistan that al Qaeda has been able to tap into. In addition, shoplifting, theft, credit card fraud, and document fraud were all activities linked to a Montreal-based terror cell involving Ahmed Ressam, who was arrested for plotting to bomb the Los Angeles International Airport during the millennium celebration. Closer to home, even something as seemingly benign as the illegal sale of cigarettes may be funding terrorist groups such as Hamas, Hezbollah and al Qaeda. All of these crimes may involve, at some point, individuals in our business or residential communities who may be either victims or witnesses to the commission or planning of these crimes. Therefore, by recognizing individuals or circumstances that are suspicious or out of the ordinary, an aware community can help prevent crime and, potentially, terrorist attacks.<sup>24</sup>

Law professor Kris Kobach succinctly states the value of state and local involvement in immigration enforcement; “They are the eyes and ears of law enforcement that span the nation. They are the officers who encounter aliens in traffic stops and other routine law enforcement situations. Federal officers simply cannot cover the same ground.”<sup>25</sup> Local officers are more familiar with the local community and have more intimate interaction with the community in general. The Florida Department of Law Enforcement was one of the first departments to join 287(g), largely because so many 9/11 hijackers had passed through Florida while plotting their deadly scheme. The department trained sixty-two officers, limiting their scope to “immigration issues with a domestic security nexus,” said Mark Zadra, an assistant commissioner with the agency.<sup>26</sup> In the spring of 2001, the plot’s ringleader, Mohammed Atta, received a traffic ticket in Broward County, Florida, for driving without a license. He had, by this time, overstayed his visa on his previous visit to the U.S. between June 2000 and January 2001. By virtue

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<sup>24</sup> Mathew J. Simeone, Jr. “Integrating Virtual Public-Private Partnerships into Local Law Enforcement for Enhanced Intelligence-Led Policing.” *Homeland Security Affairs Journal*. Supplement No. 2:2008. <http://www.hsaj.org/?special:fullarticle=supplement.2.8> (accessed October 26, 2008).

<sup>25</sup> Kris Kobach. “State and Local Authority to Enforce Immigration Law, A Unified Approach for Stopping Terrorists,” Center for Immigration Studies, June 2004. <http://www.cis.org/articles/2004/back604.html#Author> (accessed May 1, 2008).

<sup>26</sup> Karim Faheem, , “Should Immigration Be a Police Issue?” *New York Times* April 29, 2007. P.3. <http://www.nytimes.com/2007/04/29/nyregion/nyregionspecial2/29MORRISR.html?pagewanted=3&n=To p/Reference/Times%20Topics/Organizations/I/Immigration%20and%20Customs%20Enforcement,%20U.S> . (accessed August 3, 2008).

of his expired visa, Atta was an illegal alien when encountered by this officer. Three of the 9/11 hijackers were here illegally; two had previous immigration violations.<sup>27</sup> One can only wonder if the 9/11 attacks could have been averted, or at least disrupted, if the encountering officer had been armed with the knowledge and authority to inquire further as to Atta's immigration status, or at least if relationships with ICE had been established for the solicitation of timely assistance.

It is safe to assume that local police will also encounter others with similarly nefarious intentions in the future. 287(g) will improve the capacity to detect and deter those with evil intentions. Armed with timely and relevant information relating to terrorism and an understanding of immigration law, police can more expeditiously and legally scrutinize "visitors" who alert their suspicions.

## **B. SAFEGUARDING OUR COMMUNITIES SAFEGUARDS OUR NATION**

A County Sheriff in Utah who chose to remain anonymous was interviewed. Concerned about the amount of violent crime committed by illegal aliens in his county, the Sheriff spoke of the lack of interior immigration enforcement. He acknowledged that ICE was created to protect the nation from another terrorist attack, but lamented, "This county is my Homeland Security, and my Homeland Security needs are not being met." The Sheriff's concerns are supported by the fact that illegal foreign nationals have killed over 43,000 Americans on U.S. soil since 9/11.<sup>28</sup> The website "immigrationshumancost.org" is dedicated to the memory of those who have been killed or otherwise severely victimized by illegal aliens. This virtual memorial pays homage to the thousand of Americans who have been victimized by illegal aliens. The website recognizes the thousands of Americans who have been harmed by the criminals who pass

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<sup>27</sup> Mark Krikorian. Testimony before the U.S. House of Representatives Committee on International Relations, Subcommittee on Oversight and Investigations, "Visa Overstays: Can We Bar the Terrorist Door?" May 11, 2006, <http://www.cis.org/articles/2006/msktestimony051106.html> (accessed January 12, 2008).

<sup>28</sup> Mark Lowry, American Chronicle, "Illegal Alien Invasion Isn't a Victimless Crime and Is Only Deterred by Adequate and Timely Enforcement." July 10, 2007, <http://www.americanchronicle.com/articles/31705> (accessed September 18, 2008).

through the nation's open borders, stating, “For that reason, this section can only provide a symbolic tribute to the many unnamed victims who have been killed, raped, robbed, crippled and otherwise personally violated.”<sup>29</sup>

Similar sentiment is expressed by first generation U.S. citizen and political analyst, Michelle Malkin, who states, “It is particularly shocking that even in post 9/11 America, the government is still remiss in protecting the people in the most basic ways from the world's terrorists and criminals who enter at will to do as they please.” Malkin continues by saying, “...ordinary Americans must realize that their government has failed to carry out its most basic constitutional duty: to ‘provide for the common defense.’”<sup>30</sup> The borders remain a sieve while the human carnage from crime perpetrated from illegal aliens continues to mount. Some of the most violent criminals at large today are illegal aliens.<sup>31</sup> The literature is rife with countless examples of Americans being victimized daily at the hands of illegal aliens, and the flow of illegal aliens into the country, many of whom are criminals from the onset, seems to continue.<sup>32</sup>

The potential role for state and local law enforcement in homeland security efforts is enormous. They should be empowered to keep a more vigilant watch for potential terrorist activities as well as serious crimes that support illegal immigration. Section 287(g) empowers and authorizes state and local patrol officers, detectives, investigators and correctional officers to work in conjunction with ICE agents to improve national security and public safety. The years following September 11, 2001, have yielded a wealth of cases in which the arrest of an alien by a state or local police officer was crucial in securing the capture of a suspected terrorist, a career criminal, or an absconder fleeing a final removal order.”<sup>33</sup> Kobach continues by offering this hypothetical example:

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<sup>29</sup> [Immigrationshumancost.org, “Crime Victims of Illegal Aliens,”](http://www.immigrationshumancost.org/text/crimevictims.html)  
<http://www.immigrationshumancost.org/text/crimevictims.html> (accessed August 16, 2008).

<sup>30</sup> Michelle Malkin, *Invasion: How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores* (Washington, D.C.: Regnery, 2002), p. Introduction xiii.

<sup>31</sup> MacDonald, “The Illegal Alien Crime Wave.”

<sup>32</sup> “A Line in the Sand: Confronting the Threat at the Southwest Border,” 3.

<sup>33</sup> Kobach, “State and Local Authority to Enforce Immigration Law.”

...suppose that a police officer learns that a university student from a country that is a state sponsor of terrorism has made several purchases of significant quantities of fertilizer. He may also learn from other university students that the alien has not been attending classes. Neither of these actions constitutes a crime. However, from these circumstances, the officer may reasonably suspect that the alien has violated the terms of his student visa. His arrest and questioning of the alien, founded on the immigration violation but reflecting larger concerns about terrorist activity, would be lawful and would serve the security interests of the United States. Without the immigration violation, the officer would possess no legal basis to make the arrest. In this type of situation, the authority to make the immigration arrest is a powerful tool that the local police officer can use when necessary to protect the public.<sup>34</sup>

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<sup>34</sup> Kobach, "State and Local Authority to Enforce Immigration Law."

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### III. RESEARCH OBJECTIVE

Former Supreme Court Justice Sandra Day O'Connor said, "We don't accomplish anything in this world alone ... and whatever happens is the result of the whole tapestry of one's life and all the weavings of individual threads from one to another that creates something."<sup>35</sup> This "working together" approach is applicable to Homeland Security law enforcement efforts, requiring a merger of disciplines and authorities that have traditionally been distinct and separate. State and local police cannot rely on federal authorities to prevent foreign threats from infiltrating their communities. The objective of this research is to explore a viable immigration enforcement strategy and operational model to "weave" local, state and federal resources to create a more functional system.

Taking a micro approach, this thesis focuses on Utah, where significant concern has been voiced about the lack of immigration enforcement. According to a 2005 Pew Study, Utah is the home of over 85,000 illegal aliens.<sup>36</sup> Knowledgeable experts on immigration suggest this number has increased since the 2005 study. One Utah immigrant advocate said "We believe, from all kinds of different sources, that there are probably about 150,000 or so undocumented immigrants in Utah, perhaps more."<sup>37</sup> As enforcement efforts in Arizona and other states continue, the seemingly steady flow of illegal aliens into Utah is not likely to decrease. ICE alone cannot address the illegal alien problem in Utah. Putting ICE limitations in perspective, there are only 30 ICE special agents in Utah responsible for covering 29 Utah counties. Simply put, ICE is outnumbered. Lobbying for an increase in ICE resources is a continual effort; nevertheless, Utah communities now suffer as federal resources are unable to keep pace

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<sup>35</sup> Sandra Day O'Connor. Teamwork quotes. [http://www.wisdomquotes.com/cat\\_teamwork.html](http://www.wisdomquotes.com/cat_teamwork.html) (accessed November 22, 2008).

<sup>36</sup> Jeffrey S. Passel, Estimates of the Size and Characteristics of the Undocumented Population," *Pew Hispanic Center Report* (March 21, 2005).

<sup>37</sup> Tony Yapias, interviewed by the author in Salt Lake City, Utah on August 7, 2008.

with the influx of criminal aliens and the violence they bring to Utah's communities.<sup>38</sup> This shortfall warrants state and local participation in detecting and removing foreign threats from Utah.

Little research has been conducted on how to best integrate immigration enforcement with local enforcement endeavors. No city, county or state can assume a blanket policy, as every geographical area is comprised of varying and complex demographics and a unique social and political complexion — dynamics which further complicates the issue. This research explores factors to consider based on concerns and perceptions derived from interviews of those who have not yet instituted any immigration enforcement policy, as well as data from state and local law enforcement agencies that have been actively engaged in immigration enforcement for years. This thesis provides data for practitioners, policy makers, or entities concerned with how immigration enforcement activities could impact their community. It culminates with a proposed model and enforcement strategy that can bridge the gap between federal and local jurisdictions. The model is formed through analysis of data gathered in furtherance of this research while considering Utah's political, social and cultural dynamics, which must be factored into any enforcement policy — especially one so controversial. The model can also facilitate effective collaboration to aggressively counter infrastructure crimes supporting illegal immigration.

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<sup>38</sup> Mary Callaghan, Commissioner, Salt Lake County Commission, Chris Cannon, a Representative in Congress from the State of Utah, Aaron Kennard, Sheriff, Salt Lake County, Mark Reed, Regional Director, Central Region, Immigration and Naturalization Service and David J. Schwendiman, United States Attorney, District of Utah, U.S. Department of Justice. *Testimony before the Subcommittee on Immigration and Claims of the Committee on the Judiciary on Problems Related to Criminal Aliens in the State of Utah*, U.S. Congress 105, Session 2, July 27, 1998. [http://commdocs.house.gov/committees/judiciary/hju57232.000/hju57232\\_of.htm](http://commdocs.house.gov/committees/judiciary/hju57232.000/hju57232_of.htm) (accessed October 30, 2008).

## **A. LITERATURE**

### **1. Literature Pertaining to State and Local Participation in Immigration Enforcement**

A review of the relevant literature on the subject begins to provide a strategic understanding of the immigration debate and the research questions related to law enforcement's use of 287(g). The literature confirms that Americans are divided about whether immigration hurts or helps the country. Views about whether state and local law enforcement agencies should enforce immigration law are no less divided. The need for change is readily acknowledged, but policy options are rarely agreed upon. The literature supports the idea that immigration issues are truly complex. Ethical, moral, cultural, legal, economic, and certainly political considerations must go into any immigration policy decision. Representatives from the varying disciplines illustrate gaps in consensus relating to immigration. The literature captures the heated immigration debate and illuminates the controversy. There is no shortage of political trappings. Based on the literature, opinions and views are most often derived from political perspectives or biases rather than empirical data. Quantifying aspects of a phenomenon such as illegal immigration is problematic.

Two divergent schools of thought prevail: those that oppose the concept of state and local law enforcement agencies enforcing immigration law, and those that support it. Proponents argue that federal enforcement agencies are overburdened and spread too thin. Designating local police with federal immigration enforcement powers would increase resources and support in remote geographical locations where no significant ICE presence exists. As local agencies collaborate with federal immigration officers, their respective communities would benefit, and ultimately our national security would be enhanced. Opponents argue that the government is overstepping its bounds by allowing local agencies to enforce federal statutes, especially when it comes to civil violations. Much of the literature is written by lawyers and immigrant advocacy groups who oppose such laws and initiatives like 287(g), arguing that Congress is using local enforcement efforts to remedy its failure to enact comprehensive immigration reform. Immigrant



advocates propose counter methods to incorporate immigrants into communities, investing in instead of marginalizing them. Many who oppose 287(g) tout pro-immigrant measures to maximize the economic, social, and cultural benefits of immigrants in the nation's towns, cities, counties, and states.<sup>39</sup> 287(g) opponents also argue irreconcilable impacts on communities where police engage in immigration enforcement.

The following sections represent samples of the literature reviewed for this thesis in exploring ways in which state and local law enforcement entities can collaborate with federal immigration officers. The authors and entities represent a number of different fields, including the following:

- Academics/Scholars
- News media — journalists and reporters
- Immigrant Advocacy groups — Attorneys and non attorneys
- Law Enforcement Community
- Government officials or agencies — speeches, testimony and reports
- Legislation (proposed and passed)

## **2. Academics/Scholars**

The following are examples of opposing perspectives that encapsulate other academic opinions:

Kris Kobach, former Counsel to the Attorney General and currently a professor at University of Missouri-Kansas City School of Law states,

The terrorist attacks of September 11, 2001, underscored for all Americans the need to restore the rule of law in the immigration arena. Terrorists were able to enter the country undetected, overstay their visas with impunity, and move freely within the country without interference from

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<sup>39</sup> National Immigration Forum, State and Local Police Enforcement of Immigration Laws, "Pro-Immigrant Measures Available to State or Local Governments: A Quick Menu of Affirmative Ideas," [www.nilc.org/immlawpolicy/misc/affirmstatelocalmenu\\_2005-09-13.pdf](http://www.nilc.org/immlawpolicy/misc/affirmstatelocalmenu_2005-09-13.pdf) - (accessed October 27, 2007).

local law enforcement officers. The assistance of state and local law enforcement agencies can mean the difference between success and failure in enforcing the immigration laws.<sup>40</sup>

Speaking out against The Homeland Security Enhancement Act of 2003, which compelled state and local agencies to enforce immigration laws, David A. Harris, Professor of Law and Values at the University Of Toledo College Of Law, argues that local enforcement of immigration law “will destroy the all-important relationships of trust that police have painstakingly built with immigrant communities.”<sup>41</sup> His position is widely accepted by others in the academic field, who also warn that immigration enforcement should be the sole responsibility of federal authorities.

### **3. News Media**

The media influence perceptions about the illegal alien in the United States. Characterizations of the illegal alien range from the sympathetic to the xenophobic. Such characterizations contribute to the confusion about the illegal alien problem. The media usually portray the plight of the illegal alien in the United States using the historical view of a nation of immigrants. Often, the media resist portraying the illegal alien as anything but a hard working border-crosser who simply wants to feed his family and escape the throngs of third world oppression. However, the traditional image of aliens may have changed as a result of the terrorist attack on the World Trade Center on September 11, 2001.<sup>42</sup> Some journalists write to expose weaknesses, lapses, loopholes, and obstacles in our immigration system, and consequently our national security, offering proposed

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<sup>40</sup> Kris W. Kobach, Testimony before the House Committee on Homeland Security on The 287(g) Program, *Ensuring the Integrity of America's Border Security System through Federal-State Partnerships*, Congress 109, Session 1, July 27, 2005, [bulk.resource.org/gpo.gov/hearings/109h/28332.pdf](http://bulk.resource.org/gpo.gov/hearings/109h/28332.pdf) (accessed December 10, 2008).

<sup>41</sup> David A. Harris, Testimony before the House Committee on Homeland Security on The 287(g) Program, *Ensuring the Integrity of America's Border Security System through Federal-State Partnerships*, Congress 108, Session 2, April 22, 2004, [http://judiciary.senate.gov/testimony.cfm?id=1156&wit\\_id=3324](http://judiciary.senate.gov/testimony.cfm?id=1156&wit_id=3324) (accessed October 3, 2007).

<sup>42</sup>Weissininger, “The Illegal Alien Problem.”

remedies and solutions.<sup>43</sup> Others advocate on behalf of those who come to the U.S. illegally to seek refuge, financial opportunities, or simply a better life than their home country can offer. Although the problem of a broken immigration system is acknowledged, solutions to the problem range from sealing the border to opening it to virtually anyone who wants to come to the U.S. Fixes proposed by the media are usually aligned with either the prevailing right or left partisan agenda relating to immigration. The media reports are either stridently for or against 287(g), as they seem to embrace one side of the political debate or the other.

#### **4. Immigrant Advocates: Attorneys and Non-Attorneys**

Much of the literature surrounding state and local involvement in immigration enforcement is generated by pro-immigrant advocate groups, many of whom vigorously oppose the issue. These representatives cite constitutional problems or Congressional preemption associated with local police enforcing federal law. The literature also argues that authorizing local police to enforce immigration laws would result in rampant civil right violations. Pro-immigrant advocates assert that local police departments will inevitably use this authority to justify racial profiling.<sup>44</sup>

As expressed by an immigrant advocacy group arguing against the Immigration Law Enforcement Act,<sup>45</sup>

If this bill becomes law, public safety will suffer as immigrants become afraid to report crimes and information to the police. In addition, local

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<sup>43</sup> Michelle Malkin, Testimony before the House Committee on Homeland Security on The 287(g) Program, *Ensuring the Integrity of America's Border Security System through Federal-State Partnerships*, Congress 108, Session 2, April 22, 2004, [http://judiciary.senate.gov/testimony.cfm?id=1156&wit\\_id=3323](http://judiciary.senate.gov/testimony.cfm?id=1156&wit_id=3323) (accessed October 3, 2007).

<sup>44</sup> Lizette J. Olmos. League of United Latin American Citizens. "LULAC Opposes State and Local Law Enforcement Taking on the Role of Enforcing Federal Immigration Law. Cases of Racial Profiling and Police Discrimination on the Rise" (Washington, D.C.: August 24, 2007), <http://www.lulac.org/advocacy/press/2007/immigrationreform8.html> (accessed November 18, 2007).

<sup>45</sup> Immigration Law Enforcement Act of 2006, Title I, State and Local Law Enforcement Cooperation in the Enforcement of Immigration Law Act. This title grants state and local police the authority to enforce all federal immigration laws. This includes not only criminal violations, but also civil violations of U.S. immigration laws. If this bill becomes law, any state and local police officer would have the authority to investigate the immigration status of people who have not committed crimes, and to investigate private citizens and businesses they suspect have hired undocumented workers.

businesses will be disrupted as police investigate their workforces and hiring procedures. Finally, this bill will lead to civil rights abuses, as people who look or sound “foreign” will be subjected to extra scrutiny by officers trying to enforce the law. When state and local police have attempted immigration enforcement in the past, they have been met with expensive lawsuits as they inevitably used profiling to decide who to question and detain.<sup>46</sup>

## **5. Law Enforcement Community Representatives**

Immigration is not a new issue; in fact, it has been an essential part of the fabric of America's society since the nation's inception. The distinction of 'legal' and 'illegal' immigration has existed since 1882, when Congress passed the Chinese Exclusion Act — one of the nation's first immigration laws established to keep immigration populations out of the United States. Additionally, police response to the immigrant community is not new either. For centuries, police agencies have sought to understand the cultures and perspectives of the growing international communities within their jurisdictions. The scope of complexity of today's immigrant communities presents law enforcement with a host of challenges.<sup>47</sup>

The literature is full of examples of law enforcement representatives who believe that locals enforcing immigration law would make their communities safer, and many who argue against it. President of the International Association of Chiefs of Police (IACP) Chief Mary Ann Viverette of the Gaithersburg, Maryland, Police Department asserts that state and local law enforcement should not be involved in the enforcement of immigration laws because of the possible “chilling effect” that such enforcement would have on the immigrant community. Concerns raised by local law enforcement officers are based primarily on fears that their participation in immigration enforcement will undo the progress they have made toward developing trust in immigrant communities so that members of these communities are more willing to come forward and report crimes to the

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<sup>46</sup> National Immigration Forum, “State and Local Police Enforcement of Immigration Laws, Immigration Law Enforcement Act of 2006,” (Washington, D.C: September 20, 2006). <http://immigrationforum.org/DesktopDefault.aspx?tabid=843> (accessed October 27, 2007).

<sup>47</sup> *The International Association of Chiefs of Police*, “Police Chief’s Guide to Immigration Issues,” July 2007 publication, 7.

police.<sup>48</sup> Chief Viverette believes that both legal as well as illegal aliens would hesitate to cooperate with police in criminal investigations for fear that they would be arrested if it were discovered they were in the country illegally.<sup>49</sup>

The potential “chilling effect” is the primary argument posed by virtually every group opposing local police participation in immigration enforcement. Some maintain that empowering local police to enforce immigration law would, in effect, alienate the immigrant community upon which local police departments rely greatly for intelligence relating to other crimes in the community.<sup>50</sup> One such policy is Special Order 40, established in Los Angeles in 1979, which prohibits police officers from “initiat(ing) police action with the objective of discovering the alien status of a person.” This prevents officers from inquiring about the immigration status of an individual and from contacting federal immigration officials about an individual’s immigration status.<sup>51</sup> The IACP has not taken a policy position on whether state and local law enforcement should be involved in the enforcement of civil immigration laws because of the disparate stance local agencies are taking. They believe that this lack of cooperation could diminish the ability of law enforcement agencies to effectively police their communities and protect the public they serve.

Chief Viverette readily acknowledges that other law enforcement executives believe that it is appropriate for state and local law enforcement to play an active role in immigration enforcement because individuals who are in the country illegally have violated the law and should be treated in the same fashion as other criminals.<sup>52</sup> They feel that it is the duty of state and local law enforcement to assist the federal government

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<sup>48</sup> Mary Ann Viverette, “Immigration Enforcement by Nonfederal Police Agencies,” *International Association of Chiefs of Police*, (Alexandria, VA, 2006), n.p.  
[http://www.iacp.org/documents/index.cfm?document\\_id=822&document\\_type\\_id=3&fuseaction=document](http://www.iacp.org/documents/index.cfm?document_id=822&document_type_id=3&fuseaction=document)  
t (accessed November 7, 2007).

<sup>49</sup> Ibid.

<sup>50</sup> David A. Harris. “The War on Terror, Local Police and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America.” Bepress Legal Services (2006): 1-71.  
[law.bepress.com/cgi/viewcontent.cgi?article=6323&context=expresso](http://law.bepress.com/cgi/viewcontent.cgi?article=6323&context=expresso) (accessed November 1, 2007).

<sup>51</sup> Judicial Watch “LAPD Special Order 40,” <https://www.judicialwatch.org/lapd-special-order-40>  
(accessed November 28, 2008).

<sup>52</sup> Viverette, “Immigration Enforcement by Nonfederal Police Agencies.”

(ICE) in apprehending and detaining these individuals.<sup>53</sup> Others argue that local agencies that refuse to become involved in immigration enforcement are betraying their oath to uphold and enforce the laws. These proponents support enforcing immigration laws, even civil violations. The literature provides numerous accounts of how communities have benefited by their local law enforcement agencies incorporating 287(g) into their enforcement regimen. Participating agencies recount apprehensions of serious offenders that would have otherwise remained undetected, as well as reported “self deports” or illegal aliens leaving communities where state and locals participate in immigration enforcement.

## **6. Government Officials or Agencies**

The Department of Homeland Security (DHS) asserts that “terrorism and criminal activity are most effectively combated through a multi-agency/multi-authority approach that encompasses federal, state and local resources, skills and expertise. State and local law enforcement play a critical role in protecting our homeland because they are often the first responders on the scene when there is an incident or attack against the United States. During the course of daily duties, they will often encounter foreign-born criminals and immigration violators who pose a threat to national security or public safety.”<sup>54</sup> Following 9/11, DHS endorsed and promoted Section 287(g) as a tool and remedy for local enforcement agencies to partner with ICE in combating illegal immigration problems that were plaguing communities throughout the nation.

Although Section 287(g) was passed in 1996, most of the literature about the law was written after the terrorist attacks on September 11, 2001. The events of 9/11 spurred law enforcement agencies to experiment with this legislation, not only to better address terrorism within their respective communities, but to also combat crime committed by

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<sup>53</sup> Viverette, “Immigration Enforcement by Nonfederal Police Agencies.”

<sup>54</sup> U.S. Immigration and Customs Enforcement, *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*. [http://www.ice.gov/partners/287g/Section287\\_g.htm](http://www.ice.gov/partners/287g/Section287_g.htm) (accessed October 3, 2007)

illegal aliens.<sup>55</sup> The literature indicates that potential threats coming from other countries forced immigration enforcement to the forefront.

*The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (9/11 report), lent credence to the need for State and local law enforcement agencies to establish closer relationships with federal law enforcement agencies in identifying terrorists and addressing immigration issues.<sup>56</sup>

Shortly following the release of the 9/11 Report, many political figures spoke out in favor of the Report's admonition for closer relationships between local police agencies and federal law enforcement agencies. The literature revealed that many prominent political figures championed the implementation of 287(g) while other politicians strongly opposed the proposition of legislature compelling State and local police to enforce immigration law, as well as their participation in the 287(g) program.

An example of one such proponent is Senator Orrin Hatch of Utah who continues to support and promote 287(g). Conversely, Senator Patrick Leahy of Vermont vehemently opposes local enforcement agencies enforcing immigration law. These two positions are reflective of the divergent political sentiments expressed throughout the literature. During a 2004 Senate Judiciary hearing relating to the subject, Senator Leahy claimed that adopting this new policy could be widespread and deeply harmful to law enforcement and immigrants alike noting that such a program would cause a "chilling effect" if our nations' communities became involved in this venture. He claimed that 287(g) would be detrimental to the relationship between local police and their respective immigrant communities.<sup>57</sup> The literature includes many other reports and statements by political leaders from our nation's smallest communities to our largest cities, as well as

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<sup>55</sup> Kris W. Kobach, *Testimony before the House Committee on Homeland Security on The 287(g) Program: Ensuring the Integrity of America's Border Security System through Federal-State Partnerships*, 108<sup>th</sup> Congress, Second Session, April 22, 2004, [http://judiciary.senate.gov/testimony.cfm?id=1156&wit\\_id=3325](http://judiciary.senate.gov/testimony.cfm?id=1156&wit_id=3325) (accessed October 3, 2007).

<sup>56</sup> *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton & Company, 2004), 81.

<sup>57</sup> Patrick Leahy, *Testimony before the House Committee on Homeland Security on The 287(g) Program: Ensuring the Integrity of America's Border Security System through Federal-State Partnerships*, 108<sup>th</sup> Congress, Second Session, April 22, 2004 [http://judiciary.senate.gov/member\\_statement.cfm?id=1156&wit\\_id=103](http://judiciary.senate.gov/member_statement.cfm?id=1156&wit_id=103) (accessed October 3, 2007).

renowned national leaders who either support or oppose the proposition. The literature reveals many examples of local mayors and sheriffs who have included 287(g) proposition as part of their platform, and conversely, other civic leaders who criticize those who believe that such a policy would benefit the community at large.

## **7. Legislation**

As the 9/11 Report alludes, the terrorist attacks on September 11, 2001, could have possibly been detected, if not prevented, if a greater exchange of information was taking place between local and federal law enforcement agencies.<sup>58</sup> It is apparent that the 9/11 Report had significant impact on policy makers as many pieces of legislation were subsequently proposed to empower State and local enforcement agencies to work in close collaboration with the federal government, specifically relating to immigration enforcement. Legislation such as the Clear Law Enforcement for Criminal Alien Removal (“CLEAR”) Act of 2005, The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, and the Homeland Security Enhancement Act of 2005, are just a few of the bills emphasizing increased coordination and communication between the federal government and local police agencies, and empowering local police to enforce immigration law.<sup>59</sup> Although few of the bills passed, the post-9/11 legislative proposals indicate that strong emphasis was being placed on local law enforcement agencies to enforce federal immigration law.

## **8. Gaps in the Literature**

The literature falls short in offering middle ground between the two schools of thought. Solutions recommended in the literature seem to border on extremes. Proponents of state and local involvement in immigration enforcement argue for enactment of legislation compelling state and local agencies to aggressively enforce federal immigration laws, while those in opposition argue that immigration enforcement is a

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<sup>58</sup> 9/11 Commission Report, 390.

<sup>59</sup> National Immigration Forum, “State and Local Police Enforcement of Immigration Laws,” (Washington, D.C.: 2007) <http://immigrationforum.org/DesktopDefault.aspx?tabid=737>. (accessed October 28, 2007).



federal enforcement function and should not be commingled with local law enforcement endeavors; to do so would be detrimental to their respective communities. Recommended approaches seem to be “all or nothing.”

The closest argument for compromise is presented by James Carafano, a leading expert in defense affairs, military operations and strategy, and homeland security at The Heritage Foundation. Carafano argues against legislation compelling state and local authorities to enforce immigration laws. Instead, he advocates strongly for implementing 287(g) as a mechanism for state and locals to voluntarily participate in immigration enforcement. Carafano states:

At the very least, in the normal course of criminal investigations, state and local law enforcement should neither ignore immigration law nor hesitate to cooperate with federal immigration officials. In the case of counterterrorism and violent and organized crime, more concerted effort is needed. It [state and local involvement in immigration enforcement] provides protection to states and their police while requiring that well-trained officers conduct immigration investigations. It also allows states and local governments to tailor programs to meet their unique circumstances and requirements. Any comprehensive border and immigration security legislation should strengthen and expand programs authorized under 287(g).<sup>60</sup>

Basically, Carafano endorses tailoring local enforcement strategies incorporating 287(g) in communities and areas where the additional enforcement tool is needed *and* wanted.

## **B. RESEARCH QUESTIONS**

This research focused on the following questions in search of a middle ground solution, considering the disparate views about the extent to which state and locals should engage in immigration enforcement:

1) With limited resources to detain and remove illegal aliens, what types of violations should be prioritized by state and local law enforcement agencies to avoid overwhelming jails and court systems with mere administrative violations?

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<sup>60</sup> James J. Carafano, “Build on Section 287(g) of the Immigration and Nationality Act to Boost State and Local Immigration Enforcement.” (Washington, D.C.: Heritage Foundation, September 2006) n.p., [www.heritage.org/Research/HomelandSecurity/wm1212.cfm](http://www.heritage.org/Research/HomelandSecurity/wm1212.cfm) (accessed November 3, 2007).

2) Can local law enforcement agencies find an acceptable balance between overall public safety and security of the community while mitigating a “chilling effect” which might further alienate the immigrant community?

3) Is it possible to enforce immigration law while attempting to foster trust with the local immigrant community?

4) Regarding Utah specifically, is there an enforcement model, or some semblance thereof, that has been implemented elsewhere where civil and criminal immigration enforcement is applied in a collaborative local, State and Federal setting?

## **C. METHODOLOGY**

This researcher employed the following methodology to gather relevant data:

### **1. Interviews**

Stakeholders in immigration enforcement efforts in Utah were interviewed. Insight was solicited from law enforcement leaders and officers, local ICE agents, civic leaders, Hispanic advocates and Utah legislative representatives, each having a vested interest in 287(g) implementation. Commentary from both ends of the political spectrum was solicited and considered in formulating an enforcement mechanism for agencies seeking participation while allowing others to opt out.

### **2. Surveys of Local Law Enforcement Representatives Currently Participating in 287(g) Throughout the U.S.**

The research surveyed local law enforcement officers currently participating in 287(g) in other various parts of the U.S. These agencies were an invaluable resource in this research endeavor. Questions were tailored to address reasons for participation, community response and reaction, trends in criminal activity, nationalities of offenders, any marked or quantifiable “chilling effect” among the immigrant community, and other experience-based insight. One hundred current participating officers were invited to take the survey, soliciting both positive and negative feedback about their experiences. 86 participants responded. Survey results were analyzed to detect recurring themes, barriers,

difficulties, political and institutional roadblocks. The survey elicited feedback about the training received as well as unexpected consequences of their 287(g) involvement. The data was coded and analyzed, and conclusions were drawn for best practice determinations and program improvements. Insight as to what has worked for current participants and where improvements can be made will serve to more effectively administer the program, or to dissuade those who are unsure of what the commitment will actually entail. Interviews of current participants reveal that wavering in commitment quickly becomes problematic if priorities, mission and focus are not clearly established and accepted by department leaders, as well as the field level officers that rely on departmental support as they tackle the complexities of immigration enforcement.

Qualitative analysis identified areas of concern to consider in formulating a proposed model and strategy. As the prospect for state and local agencies to enforce immigration laws gains momentum, the need for specific guidance and direction is imperative. To date, few guidelines and directives have been generated for prospective participants.

### **3. Surveys of Utah State and Local Law Enforcement Agency Heads**

In addition to interviews, the researcher surveyed a sampling of Utah law enforcement department/agency leaders using a subscriber online Internet survey tool. The anonymous survey addressed salient issues and concerns about local and national immigration enforcement relating to 287(g) involvement that have been cited throughout the literature. The researcher constructed survey questions to elicit attitudes, opinions, biases, perceived barriers and prohibitive factors relating to the prospect of participating in immigration enforcement. One hundred invitations to participate were sent to Utah Sheriffs, Police Chiefs and other prominent leaders in the Utah law enforcement community. Forty-seven of these law enforcement leaders responded. The fact that slightly less than 50% chose not to respond can arguably be attributed to the reluctance of many department heads to even broach such a politically sensitive issue.

Forty-seven enforcement leaders took the survey, yet five others who declined the online survey agreed to provide anonymous commentary that also contributed to this

research effort. Those who declined the survey but agreed to speak “off the record” were primarily supportive of a local and federal collaboration, yet were concerned about the lack of support they might receive from their respective governing political entities. Data provided by all participants afforded telling insight about how the Utah law enforcement community feels about 287(g) and the prospect of immigration enforcement in general. 38% of the respondents represented departments from primarily urban areas, 11% were from primarily rural areas, and 38% represented departments whose area of responsibility covered both urban and rural areas. 90% of the respondents were appointed officials and 10% were elected officials.

Although participants were aware that those participating were also law enforcement leaders in Utah, they were not aware of how each specifically responded. The anonymous nature of the survey prevented the impact that relationships and affiliations might have if participants were aware of each other’s responses. Responses were analyzed, and sub-issues were identified as they emerged. Certain issues seemed to evoke more disparate and impassioned responses than others. The quantitative data, qualitative commentaries and data available in the literature provided foundational support for chapter topics and analysis culminating in a suggested enforcement model.

#### **4. Analysis of Joint Enforcement Operations**

In addition to interviews and surveys, a detailed analysis of ICE and local collaborative enforcement operations provided important information. Throughout the summer months of 2008, Utah ICE agents joined forces with local law enforcement agencies to identify and arrest violent transnational gang members in Utah. The inter-jurisdictional, multi-agency initiative provided a data-rich environment for further research and insight into the needs and concerns of Utah’s state and local police. By analyzing the operational phases of this extensive enforcement undertaking, critical strategic findings emerged.

One of the primary concerns, as revealed by many of the local officers involved in these joint operations as well as those surveyed, was confusion about statutory authority to engage in immigration enforcement. Due to ICE’s authority, the agency is usually

welcome participant in enforcement operations where encountering foreign nationals is expected, but how should state and locals proceed where ICE agents are not readily available?

#### IV. LEGAL AUTHORITY FOR NON-FEDERAL IMMIGRATION ENFORCEMENT

The literature and surveys reveal that many state and local police are deterred from immigration enforcement due to confusion about federal versus the states' authority and the complexity of immigration law. Case law supports state police engaging in immigration enforcement where it does not hinder Congress' objectives relating to the INA's civil provisions "regulating authorized entry, length of stay, residence status and deportation."<sup>61</sup> But the prospect of states enforcing immigration laws still poses ideological and political conflicts. Perhaps the most comprehensive analysis discovered in the review of the literature and academic commentary regarding state and local involvement in immigration enforcement was found in Laurel Boatright's "'Clear Eye for the State Guy': Clarifying Authority and Trusting Federalism to Increase Nonfederal Assistance with Immigration Enforcement."<sup>62</sup> Boatright's cogent and detailed explanation of the social, political and legal dynamics surrounding the immigration enforcement conundrum explains how Congress scrambled following 9/11 to reconcile immigration enforcement deficiencies throughout the nation. The 9/11 Commission acknowledged that our current system had failed, and suggested greater coordination between local and federal enforcement entities. Many advocate removing the other "wall"<sup>63</sup> in American law enforcement: the wall that currently discourages the nation's estimated 800,000 state and local police officers from enforcing federal immigration law.<sup>64</sup> But should such an enforcement strategy be compelled or voluntary?

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<sup>61</sup> The California Court of Appeals, citing *Gonzales v. City of Peoria*, reiterated this conclusion in *Gates v. Los Angeles Superior Ct.*, 238 Cal. Rptr. 592, 597-98 (ct. App. 1987).

<sup>62</sup> Laurel R. Boatright, "'Clear Eye for the State Guy': Clarifying Authority and Trusting Federalism to Increase Nonfederal Assistance with Immigration Enforcement," *Texas Law Review* 84, no. 6 (2006): 1633, <http://www.proquest.com.libproxy.nps.edu/> (accessed July 9, 2008).

<sup>63</sup> The restrictions on sharing domestic counterintelligence information among FBI agents and DOJ prosecutors were coined by the 9/11 Commission as the "wall." The removal of laws and policies prohibiting or otherwise restricting the sharing of information between the intelligence and law enforcement communities was a central provision of the U.S. Patriot Act.

<sup>64</sup> Boatright, "Clear Eye for the State Guy," 1633.

## A. COMPELLED OR VOLUNTARY PARTICIPATION

In an attempt to improve the nation's post-9/11 immigration enforcement efforts, federal lawmakers contemplated two distinct approaches for procuring state and local involvement in immigration enforcement; these approaches are referred to by Laurel Boatright as the *coercive* and the *permissive* approaches.<sup>65</sup> They were exemplified in two pieces of legislation: the coercive approach in the Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005 Act (Border Protection Act), and the permissive approach in the Comprehensive Enforcement and Immigration Reform Act of 2005. Perhaps the most significant substantive issue addressed in both pieces of legislation was this: Do state and local police have legal authority to enforce immigration law absent delegation of federal authority? Implicit in both pieces of legislation was the Congressional endorsement that state and local police are *not* precluded from enforcing even federal immigration laws. State, county, and municipal law enforcement officers are sworn to uphold the law. This includes upholding the U.S. Constitution, and therefore implies enforcing federal laws. As a 1996 Department of Justice legal opinion put it, "It is well-settled that state law enforcement officers are permitted to enforce federal statutes where such enforcement activities do not impair federal regulatory interests."<sup>66</sup> The current Justice Department Office of Legal Counsel has reportedly read the law and the Constitution even more in accord with the Founding Fathers.<sup>67</sup>

State involvement in immigration enforcement is supported by Kris Kobach, whose opinion regarding the legal authority of state and local police to enforce immigration law was expressed in an article published by the Center for Immigration Studies.<sup>68</sup> In sum, Kobach argues that state and local police can make arrests for violations of federal law — both civil and criminal — based on authority flowing from

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<sup>65</sup> Boatright, "Clear Eye for the State Guy," 1636.

<sup>66</sup> U.S. Department of Justice, "Assistance by State and Local Police in Apprehending Illegal Aliens," Memorandum Opinion for the U.S. Attorney, Southern District of California, Feb. 5, 1996, 4. [www.usdoj.gov/olc/immstopo1a.htm](http://www.usdoj.gov/olc/immstopo1a.htm) (accessed October 27, 2008).

<sup>67</sup> James R. Edwards, Jr., Center for Immigration Studies, "Officers Need Backup: The Role of State and Local Police in Immigration Enforcement," April 2003, <http://www.cis.org/articles/2003/back703.html> (accessed October 27, 2008).

<sup>68</sup> Kobach, "State and Local Authority to Enforce Immigration Law."

the states' status as sovereign entities. States are sovereign governments possessing all residual powers not abridged or superceded by the U.S. Constitution. The states possess what are known as "police powers," which are an exercise of the government to protect the lives, health, morals, comfort, and general welfare of the people.<sup>69</sup> Essentially, states may take action (consistent with their own constitution and laws) unless there exists a prohibition in the U.S. Constitution or such action has been preempted by federal law.<sup>70</sup> Kobach explains that state police have the authority to make arrests for federal law violations, and that this authority is not limited to situations in which they are exercising delegated federal power, such as 287(g). Such authority stems from the basic power of one sovereign to assist another sovereign.

Kobach concludes that, not only do states have inherent arrest authority relating to immigration violations, but Congress has never preempted states from enforcing federal laws and circuit court rulings have affirmed the notion.<sup>71</sup> Nevertheless, as Kobach very deliberately emphasizes, any assistance that state or local police provide the federal government in the enforcement of federal immigration law should not be coerced. He advocates for the permissive approach, strongly encouraging closer cooperation between ICE and local police, particularly by mutual involvement in the 287(g) program.<sup>72</sup>

### **1. Coercive Legislation**

The Border Protection Act was proposed to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws and to enhance border security by enlisting state and local involvement in immigration enforcement. In theory, the legislation was a good measure, providing additional tools and means to enhance immigration enforcement. The legislation clarified that states and localities have the legal authority to investigate, arrest, and detain foreign nationals who have allegedly violated federal immigration law. The bill's downfall was its attempt to coerce sanctuary states to

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<sup>69</sup> *Manigault v. Springs*, 199 U.S. 473, 480 (1905).

<sup>70</sup> Kobach, "State and Local Authority to Enforce Immigration Law."

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*



abolish their noncooperation policies as a condition for continued receipt of federal funds in the form of the State Criminal Aliens Assistance Program (SCAAP); SCAAP, established in 1994, provides federal subsidies to compensate state and local jurisdictions for incarceration of illegal aliens who are serving time for a felony conviction or at least two misdemeanors<sup>73</sup> (Utah has received partial compensation under this program). Forcing states into immigration enforcement was not well received, and contributed greatly to this law's demise.

## **2. Permissive Legislation**

The Comprehensive Enforcement and Immigration Reform Act of 2005 used almost identical statutory language affirming state and local immigration enforcement authority, yet avoided the coercive nature by *not* incorporating a punishment to accomplish its goal of increased state and local assistance in immigration enforcement.<sup>74</sup> The intent of both sets of legislation was to empower states to participate in immigration enforcement efforts, but both included an implicit element of "required action."

Laurel Boatright sides very convincingly with permissive approaches to congressionally-mandated immigration enforcement. Boatright states,

If Congress wishes to encourage state and localities to assist with immigration enforcement, it should act immediately to clarify congressional intent with regard to states' and localities' legal authority to do so. More importantly, after clearly authorizing, empowering and encouraging states and localities to enforce immigration law, Congress should stay its hand and place trust in the principles of federalism, thereby allowing state and local governments to resolve problems of immigration enforcement (and the many remaining issues) for themselves.<sup>75</sup>

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<sup>73</sup> Boatright, "Clear Eye for the State Guy," 1661.

<sup>74</sup> Ibid., 1637.

<sup>75</sup> Ibid.

Some politicians, such as Senator Edward Kennedy, who opposes coercive legislation, acknowledged that 287(g) was a viable option for enacting such legislation.<sup>76</sup> Local law enforcement agencies became very interested in 287(g) shortly after 9/11. ICE moved to educate agencies who wanted to take part in the voluntary partnership. The voluntary nature of 287(g) makes the proposition no less controversial. As some have embraced the prospect of adapting to our new post-9/11 climate and coordinating immigration enforcement efforts, others remain reluctant, if not completely rejecting the idea altogether. Nevertheless, states are flexing their legislative muscle to enact laws to make up for Congress' failure to do so.

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<sup>76</sup> National Immigration Law Center, "Homeland Security Enhancement Act Provisions Spark Sharp Disagreement," *Immigrants' Rights Update*, Vol. 18, no. 3 (Washington, D.C.: May 20, 2004) <http://www.nilc.org/immlawpolicy/arrestdet/ad081.htm> (accessed November 15, 2007).

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## V. POLITICAL CONFLICTS

### A. 287(G) AND UTAH: A HISTORY OF POLITICS

Removing politics from immigration issues is virtually impossible. This researcher interviewed Utah Senator Jon Greiner, who also serves as the Ogden Police Chief. He expressed concern about the politics surrounding state and local police involvement in immigration enforcement. Senator Greiner related how former Salt Lake City Police Chief Ruben Ortega was an enthusiastic advocate of assisting federal immigration authorities. Circa 1997, shortly following the creation of 287(g), a crime summit was held in Utah. According to Chief Greiner, police records indicated that, in 1995, illegal aliens were involved in 80% of Utah's arrests for felony-level narcotics violations.<sup>77</sup> Part of the conference entailed discussions about combating immigration-related crime, including the prospect of Utah agencies pioneering 287(g) participation. Attorney General Janet Reno and a high-ranking representative of INS came to Utah to promote and educate Chief Ortega about the untried, yet promising program. Utah was set to blaze the trail and Chief Ortega wanted to lead the way. But Chief Ortega was stopped by Rocky Anderson, a strong opponent of state and local participation in immigration enforcement. "Rocky Anderson decided to run for mayor and made Chief Ortega a focal point of his campaign declaring that Ruben Ortega would be his first casualty if he was elected."<sup>78</sup> Due to political pressures, which basically amounted to the city council's non-support of the Chief's intentions, Chief Ortega ceased pursuing the 287(g) involvement. Chief Greiner went on to say that the summit only resulted in a few more immigration officers being hired for Utah. No collaborative task force resulted, and Utah is still waiting for an effective solution.<sup>79</sup>

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<sup>77</sup> Federation for American Immigration Reform (FAIR), "Immigration Impact: Utah," [http://www.fairus.org/site/PageServer?pagename=research\\_research247f](http://www.fairus.org/site/PageServer?pagename=research_research247f) (accessed February 9, 2008).

<sup>78</sup> Jon Greiner (Ogden, Utah, Police Chief and Utah State Senator), interview by author, Ogden, Utah, June 27, 2008.

<sup>79</sup> Ibid.

## B. CURRENT POLITICAL CLIMATE IN UTAH

The National Conference of State Legislatures (NCSL) recently issued a report that found that “States introduced an unprecedented 1,562 laws regarding immigration, of which 240 became law in 2007. In the first three months of this year, more than 1,100 bills were introduced in the 44 state legislatures that were in regular session.”<sup>80</sup> Immigration enforcement has also been the topic of heated debate in Utah. If “public will” is manifest through legislative proposals, it appears that Utah citizens are growing increasingly concerned about crimes committed by illegal aliens. Numerous immigration-related bills were presented by Utah legislators during the 2008 legislative session in response to their respective constituencies.<sup>81</sup>

One such bill was Senate Bill 81 (SB 81). The law was drafted based on concerns that the federal government was not doing its job.<sup>82</sup> Implementation of the Bill was delayed until July of 2009 so a legislative task force could gather more information about the pros and cons of the law, and how state involvement in immigration enforcement would impact Utah. SB 81 authorizes state and local law enforcement agencies to enforce

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<sup>80</sup> Bill Berkowitz, “POLITICS-US: Is Immigration Off the Table in Election 2008?” <http://ipsnews.net/news.asp?idnews=42257> (accessed November 22, 2008).

<sup>81</sup> The following is a list of Utah bills that were introduced in 2008, and their sponsors. HB241-Repeal of Exemptions from Nonresident Tuition: Repeal of 2002 law allowing undocumented immigrants to pay in-state tuition if they attend a Utah high school for three years and graduate, Rep. Glenn Donnelson, R-North Ogden; HB237-Illegal Immigration Enforcement Act: Gives certain local and state law enforcement officers the authority to enforce federal immigration law and perform some functions of federal immigration officers, Donnelson; HB239-Driver License Qualifications: Repeals driving privilege cards for undocumented immigrants, Donnelson; HB98-Utah Employment Verification Act: Requires that public employers participate in the federal employment verification program and keep records, Donnelson; HB257-Employee Verification: Requires participation in the federal employment verification program as a condition for receiving certain economic incentives and procurement contracts, Rep. Stephen Sandstrom, R-Provo; HB95-Document Fraud: Creates a civil penalty of up to \$75,000 for falsifying documents to unlawfully establish legal status, Rep. Karen Morgan, D-Cottonwood Heights; HB262-Recovery of Federal Reimbursement for Costs Associated with Illegal Immigrants: Requires Attorney General to study state remedies to recover federal funds for costs associated with illegal immigration, Morgan; HB285-Licensing Eligibility: Prevents Division of Occupational and Professional Licensing from issuing a license to undocumented immigrants, Sandstrom; HB26-Notary Public Revisions: Prevents notary publics from using driving privilege cards as proof of identity, Donnelson; SB97-Immigration Task Force: Creates a bipartisan legislative task force to review and make policy recommendations on policies dealing with illegal immigrants, Sen. Scott Jenkins, R-Plain City; SB52-Identity Theft Amendment: Authorizes restitution for identity theft victims, Sen. Carlene Walker, R-Cottonwood Heights.

<sup>82</sup> Susan Wood, ABC 4 News, “Utah Senate Passes Controversial Immigration Bill,” February 2, 2008. [http://www.abc4.com/news/local/story.aspx?content\\_id=97bc5285-927f-4ed1-943c-c53185830e07](http://www.abc4.com/news/local/story.aspx?content_id=97bc5285-927f-4ed1-943c-c53185830e07) (accessed August 27, 2008).

certain aspects of immigration law. SB 81 was not engineered to incorporate 287(g) federal delegation. The bill only requires the Utah Attorney General to negotiate a Memorandum of Understanding (MOU) with the U.S. Department of Homeland Security for the enforcement of federal immigration and customs laws within the state by state and local law enforcement personnel. These negotiations are necessary to coordinate enforcement efforts that might duplicate or otherwise “impair federal regulatory interests.”<sup>83</sup> No strategy has been presented by Utah’s Attorney General, the Chief Executive Enforcement officer in the state.<sup>84</sup> The fervor surrounding SB 81 afforded this researcher relevant feedback as Utah law enforcement agencies face the real prospect of implementing immigration enforcement into their routines. A proposed strategy needs to consider that many agencies invite the new assignment while others vehemently oppose the proposition.

A Utah Police Chief who asked to remain anonymous doubted that Utah Attorney General Mark Shurtleff would support any law that required state and local police to engage in immigration enforcement. The Chief opined that AG Shurtleff strongly maintains that immigration enforcement is strictly a federal function, a stance that is not unlike many other enforcement officials throughout the nation. The noticeably frustrated Chief felt his efforts to promote immigration enforcement in his community would be frowned upon by state leaders, including the AG.

### **1. A Cry For Help**

The nation’s sheriffs seem to be similarly perplexed about the burgeoning crimes committed by illegal aliens. During a national sheriffs’ convention held in Salt Lake City in 2007, then U.S. Attorney General Alberto Gonzalez addressed a captivated audience. During his comments, AG Gonzalez alluded to the federal government’s failure to secure the nation’s borders, acknowledging that the brunt of the country’s immigration problem has now fallen on the shoulders of the nation’s sheriffs and police chiefs. During the day’s conference, this was the only comment from any of the speakers that elicited

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<sup>83</sup> Kobach, “State and Local Authority to Enforce Immigration Law.”

<sup>84</sup> Greiner, interview.

applause from the audience.<sup>85</sup> The conference agenda consisted of a multitude of issues, yet recognition that local agencies are now suffering because of failed nationally policy sparked a concerted response.

The Utah Sheriffs' Association is a non-profit professional and educational organization dedicated to the preservation of peace and protection of the lives and property of the citizens of Utah.<sup>86</sup> Gary Deland, a longtime Utah resident and renowned expert in law enforcement, corrections, and international law enforcement affairs,<sup>87</sup> serves as the current Executive Director of the Utah Sheriff's Association. In 2003, DeLand was part of a multidiscipline team assembled by the International Criminal Investigative Training Assistance Program (ICITAP).<sup>88</sup> The team was sent to Iraq to assess and make recommendations regarding the Iraqi police, corrections, and judicial systems. DeLand has been very vocal about the problems that illegal immigration poses for the law enforcement community and the political trappings that surround the issue. As stated by Executive Director DeLand:

I can think of no political issue in the last several decades which involves more double talk, special interest pandering, confusion, and disregard of the interests of the American people. Regardless of the opinions or positions on the issue that individual Americans may have, or how confused they are about the actions of their elected representatives, the one thing about which they can be sure is that illegal immigration has become highly politicized, is being driven by special interests (both right and left

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<sup>85</sup> Comment by Utah U.S. Attorney Brett Tolman during a meeting in St. George, Utah to a group of Utah sheriffs and police chiefs on January 31, 2008.

<sup>86</sup> Utah Sheriffs' Association, <http://www.utahsheriffs.org/> (accessed October 25, 2008).

<sup>87</sup> Department of Justice Office of the Inspector General. "A Review of ICITAP's Screening Procedures for Contractors Sent to Iraq as Correctional Advisors," February 2005. <http://www.usdoj.gov/oig/special/0502/index.htm> (accessed October 25, 2008).

<sup>88</sup> ICITAP is an office within the Criminal Division of the Department of Justice (DOJ) that provides training for foreign law enforcement agencies in new and emerging democracies and assists in the development of police forces relating to international peacekeeping operations. Since its creation in 1986, ICITAP has conducted training programs in numerous countries throughout the world, including Haiti, Bosnia, and Kosovo. In 2003, after the fall of Saddam Hussein, ICITAP, at the behest of the Department of Defense's Office of Reconstruction and Humanitarian Assistance, established a program through which it provided subcontractor advisors and trainers to assist with the reconstruction and development of the Iraqi police and prison systems.

of the aisle), is the opinion of individual citizens carry little weight, and, law enforcement and corrections is caught in the middle.<sup>89</sup>

DeLand further stated,

It is often difficult to speak frankly about the impact of illegal immigration on the criminal justice system workloads and budgets. Too often, honest discussion of the problems and concerns is lost in partisan sloganeering or accusations of racism; however, while the rhetoric and invectives cloud the debate, the police, courts, and corrections must still show up to work each day and play the cards they are dealt.<sup>90</sup>

## **2. A Nation of Broken Windows: A Political Quandary**

During a 2008 joint operation involving ICE and the Ogden Police Department, this researcher spoke with Officer Robert (Bob) Evans about the impact that illegal immigration has had on the city of Ogden, Utah. Officer Evans explained that his department believes in the “Broken Windows” concept posed in a book titled “Fixing Broken Windows.”<sup>91</sup> Officer Evans stated that Ogden has become a city of “broken windows;” therefore a very legalistic enforcement approach is being taken to remedy years of neglect.<sup>92</sup>

It is a fitting analogy to compare our nation’s immigration problems to the concept originated by criminologists James Q. Wilson and George L. Kelling in their 1982 article titled “Broken Windows.” Published in *The Atlantic Monthly*, the article was written to address social disorder and crime, arguing that the two are usually inextricably linked.<sup>93</sup> The Broken Windows theory implies that a broken window left unrepaired can quickly encourage more crime and vandalism because it sends a message of apathy to everyone who sees it, tacitly encouraging the breaking of other windows. The Broken

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<sup>89</sup> Gary DeLand, *The Utah Sheriff*, Executive Director’s Message, June 2007 Newsletter, Volume 5, Issue 5.

<sup>90</sup> Ibid.

<sup>91</sup> George L. Kelling and Catherine M. Coles, *Fixing Broken Windows* (New York: The Free Press, 1996).

<sup>92</sup> Robert Evans (Police Officer, Ogden City Police Department), interview by author, Ogden, Utah, June 30, 2008.

<sup>93</sup> Wilson and Kelling, “Broken Windows: The Police and Neighborhood Safety.”



Windows image explains how neighborhoods might slide into disorder and even serious crime if no one attends faithfully to their maintenance.<sup>94</sup> The authors assert that if a broken window is repaired within a short time, vandals are much less likely to break more windows or do further damage. Window-breaking does not necessarily occur on a large scale, because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.<sup>95</sup> In short, problems in the community not quickly addressed will escalate, and respectable residents will leave for safer, less disruptive areas. “Untended” behavior leads to the breakdown of community controls.<sup>96</sup> When criminal activity is largely ignored, it is granted unspoken acceptance.

This theory can be extended to the immigration problem in the U.S., which has become a nation of broken windows regarding immigration laws. For decades, millions of illegal aliens have entered the U.S., embedded themselves in communities large and small, living comfortably in violation of federal law with virtual impunity. The significance of the “civil violation” of entering the U.S. without being inspected by an immigration officer<sup>97</sup> has been downplayed, largely ignored and even readily accepted. Humanitarian concerns have been invoked by those who believe that the U.S. should be a haven for anyone seeking to escape unfavorable political, social and economic conditions outside of the U.S. This nation’s reliance on the cheap labor provided by illegal aliens has overshadowed the reality that America’s security has been compromised. The legal system will only remain credible if it consistently executes its own rules. High rates of illegal immigration can lead illegal aliens to conclude that not only does the U.S. not

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<sup>94</sup> George L. Kelling and Catherine M. Coles, *Fixing Broken Windows* (New York: The Free Press, 1996), xv.

<sup>95</sup> Wilson and Kelling, “Broken Windows: The Police and Neighborhood Safety.” 3.

<sup>96</sup> Ibid.

<sup>97</sup> Title 8 United States Code Section 1325 delineates that “Improper Entry by Alien,” any citizen of any country other than the United States who enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or eludes examination or inspection by immigration officers, or attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, has committed a federal crime.

enforce its immigration laws, but that the U.S. *may not*, by inference, enforce its laws.<sup>98</sup> Those who enter and remain in the country illegally are violating the law. Condoning or encouraging such violations causes a general disrespect for the law and encourages further illegal conduct. Forgiving the intentional violation of the law in one context because it serves policy objectives in another undermines the rule of law.<sup>99</sup>

Veteran ICE special agents (those with prior INS enforcement backgrounds) related that illegal aliens have become significantly brazen in recent years.

Compared to when I first started in the 90s, illegal aliens have little fear when approached by an immigration officer on the street, even when they know they are here illegally and could be arrested. They just don't respect immigration laws and claim their rights are being violated if we simply ask to see their papers (proof of residency). They have no respect at all for immigration officers.<sup>100</sup>

ICE agents interviewed acknowledged that their intentions are not to strike fear in someone with no claim of being in the U.S. legally, yet ICE agents are continually amazed that their statutorily-authorized inquiries about an illegal alien's status in the country are often met with a "why are you bothering me?" response. Such indignance on the part of illegal aliens is arguably an indication that they realize interior enforcement has been virtually nonexistent for years. This common indignation towards immigration officials shows that when laws no longer serve as a deterrent to potential violators, the integrity of the entire legal system is jeopardized,<sup>101</sup> and our communities become more at risk as the first lesson of American law learned by immigrants is that Americans don't bother to enforce it.<sup>102</sup>

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<sup>98</sup> Boatright, "Clear Eye for the State Guy," 1639.

<sup>99</sup> Edwin Meese III and Matthew Spalding, Heritage Foundation, "The Principles of Immigration," Backgrounder #1807, October 19, 2004, <http://www.heritage.org/Research/GovernmentReform/bg1807.cfm> (accessed September 8, 2008).

<sup>100</sup> Timothy Chard (Senior Special Agent of the Salt Lake City Immigration and Customs Enforcement - Office of Investigations), interview by author, Salt Lake City, Utah, August 14, 2008.

<sup>101</sup> Boatright, "Clear Eye for the State Guy," 1639.

<sup>102</sup> Ibid.

As articulated by Kelling and Coles, U.S. courts are institutions whose special competence lies in the discernment and application of rights.<sup>103</sup> The United States was founded on principles of rights and freedoms, and considerations by way of waivers and judicial discretion offered to even those who disregard our immigration laws seem to readily occupy America's legal arena. Kelling and Coles explain that, to the extent that courts decide matters, the drift of policy will tend to be toward individual liberties and away from community.<sup>104</sup> The court will typically advocate on behalf of an individual beggar, sleeper, solicitor or illegal alien,<sup>105</sup> as such an individual rarely constitutes much of a threat to anyone, and so the claims of communal order often seem, in these particular cases, to be suspect or overdrawn.<sup>106</sup> But, as Kelling and Coles explain, the effects on a community of many individuals taking advantage of the rights granted to an individual (or as the court sees it, an abstract, depersonalized individual) are often qualitatively different from the effects of a single person. Kelling and Coles' concept of focusing on the seeming "harmless" offenses such as panhandlers, vagrants, rude teenagers, etc., is the means to maintaining or restoring communal order.<sup>107</sup> A public space — a bus stop, a market square, a subway entrance — is more than the sum of its human parts; it is a complex pattern of interactions that can become dramatically more threatening as the scale of frequency of those interactions increase. As the number of unconventional individuals increases arithmetically, the number of worrisome behaviors increases geometrically.<sup>108</sup>

Such is the case with immigration violations. Interviews elicited ample anecdotal mentions of individuals who, by all accounts, are hard-working people who are in the country illegally. Virtually every person interviewed knew of an illegal alien who was here, working hard and "staying out of trouble." Civil immigration violations seem inconsequential when compared to other more serious crimes. Why should civil

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<sup>103</sup> George L. Kelling and Catherine M. Coles, *Fixing Broken Windows*, xiv.

<sup>104</sup> Ibid.

<sup>105</sup> Emphasis added.

<sup>106</sup> Ibid., xiv.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

violations be a concern? But the fact that an estimated twenty million have disregarded our nations' laws increases the scale of concern — especially since knowing who is here and for what reason is essential to Homeland Security efforts.

To attempt to identify, arrest, and then deport the estimated ten to twenty million illegal aliens currently residing in the U.S. is an unrealistic proposition. Throughout the country, communities are realizing that many “windows” are being “broken” and ignored in the form of the millions who have received implied consent to live in American communities. There are certainly those who look at immigration violators as seemingly innocuous offenders. In fact, there are those who argue that the nation is better because of the millions that will “do the jobs that Americans won’t do.” The broken windows allow access for birds and other creatures also seeking refuge from an inhospitable world. The shattered glass adds character to an otherwise flawless structure. The broken windows allow ventilation to a stuffy and stagnant building. After all, broken glass is replaceable and the costs are negligible. The nation shouldn’t fret over a few broken windows. Really, what do a few broken windows hurt? Criminologist Francis Cullen argues that society often creates deviance by “labeling” certain violations as more egregious than others.<sup>109</sup> The perceived severity and significance of immigration violations varies from community to community. This might explain the apparent contradictory definitions of the illegal alien as a deviant, or as simply an undocumented worker. The absence of any clear agreement on the seriousness of the illegal alien problem, coupled with the mythical notion that a problem might not even exist, or that illegal aliens are more contributors than drainers on society, encourages continued recidivism.<sup>110</sup>

The pattern of neglected broken windows impacts America’s rule of law, which has been established to maintain societal order. As laws are ignored and, in essence, mocked, order deteriorates and the security of the homeland weakens. This is why many departments have instituted more legalistic approaches, casting a wide net for all offenders, increasing the potential to encounter those who have blatantly disregarded U.S.

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<sup>109</sup> Francis T. Cullen and Robert Agnew, *Criminological Theory: Past to Present: Essential Readings* (New York: Oxford University Press, 2007), 46.

<sup>110</sup> Weissininger, “The Illegal Alien Problem.”

rule of law. As acknowledged by those surveyed, more serious crimes warranting the attention of state and locals are drawing more attention to the problem of illegal immigration, warranting efforts to finally repair some broken windows. Police officers are concerned about pockets of the community that have been overrun by illegal aliens.<sup>111</sup> As related by Officer Evans, a particular quadrant of Ogden, Utah has been taken over by a criminal element, many of whom have been identified to be illegal aliens based on the Ogden Police Department's interaction with ICE agents in furtherance of their attempts to disrupt the crime in that particular area.<sup>112</sup> Police in other parts of Utah direct ICE agents to high-crime areas that have come to be largely populated by illegal aliens.

The vast majority of Utah law enforcement agencies polled did not believe that immigration enforcement was something they should *have* to do. Furthermore, many believe that their involvement in immigration enforcement would be a distraction from other responsibilities and priorities, and would almost certainly result in additional undesired scrutiny. To many police, dealing with minor infractions is not why they became law enforcement officers; telling panhandlers to move on is a far cry from fighting crime.<sup>113</sup> Similarly, arresting someone who entered the country illegally is not what a local police officer signed up to do. Furthermore, adding immigration enforcement brings the risk of adverse publicity, lawsuits, and negative political scrutiny. Better, the police tell themselves, to pull back, do nothing. As a result, the police often fail to do even the minimal things that the courts have allowed.<sup>114</sup>

The Broken Window theory is playing out throughout the nation. Some communities remain plagued by crime as their protectors opt to take a more politically expedient stance, or the position that enforcement efforts unduly deter immigrants from

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<sup>111</sup> Such assessments are based on quantifiable intelligence provided by ICE, which ultimately determines if an arrestee is in violation of immigration status. Police become innately aware of neighborhoods that are primarily populated by suspected illegal aliens where crime is rampant, where enforcement resources are heavily deployed and where close relationships with ICE are developed.

<sup>112</sup> Evans, interview.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

cooperating with the police. On the other hand, other agencies ensnare some of the worst violators, who would not have been detected if police had continued to pull back in an attempt to avoid adverse publicity or a fear of alienating the immigrant community. Manuel Garcia Delgado was one such person arrested in Davidson County, Tennessee in July of 2007 on a misdemeanor charge. He has at least 20 different aliases, was previously deported and, since 1990, has 23 convictions for crimes such as unlawful possession of heroin and cocaine, burglary, weapons possession, various drug trafficking and theft. These convictions were in Washington State, Oregon and Utah. Prior to 287(g) implementation, he was arrested in Davidson County for a misdemeanor crime and released. Davidson County Sheriff Daron Hall has been supported by his community in his 287(g) participation. His efforts to employ the Broken Windows concept have resulted in 3,500 criminal aliens being identified and removed from his community. More than half of those removed had been previously arrested.<sup>115</sup>

Current national enforcement efforts focus on illegal aliens who commit more serious crimes. Consequently, the seemingly less harmful infractions such as mere entry without inspection have gone virtually unchecked, unless such a violator commits another crime more serious than simply sneaking across our border. Many such violators are progressing to crimes that are putting society at risk — crimes that also provide a mechanism for covert terrorist operations. As these debates continue, more and more windows are being broken, communal order disintegrates and the nation is frighteningly exposed. Is ICE postured to address the need for heightened interior enforcement efforts?

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<sup>115</sup> Daron Hall, Sheriff, Davidson County Tennessee, “287(g) Screening Pays Off in Tennessee,” <http://ncvoiceblog.wordpress.com/2008/09/15/287g-screening-pays-off-in-tennessee/> (accessed September 18, 2008).

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## **VI. RESOURCE LIMITATIONS: AN ARGUMENT FOR 287(G)**

### **A. THE ROLE OF ICE OFFICE OF INVESTIGATIONS**

Among Utah law enforcement leaders, 75% indicate that ICE is not adequately addressing crimes associated with illegal immigration. In discussing resource limitations with ICE agents, it appears this assessment is accurate. This researcher spoke with many ICE agents in Utah who explained their investigative responsibilities and inherent limitations. If broken windows are to be somehow repaired in Utah, some semblance of state and local involvement in immigration enforcement is needed.

In 2003, the Immigration and Customs Enforcement (ICE) Office of Investigations (OI) was created by merging agents of the former Immigration and Naturalization Service (INS) with the agents of the U.S. Customs Service. This amalgam of agents shed their distinctly different investigative focuses to adopt a new Department of Homeland Security (DHS) mission. ICE Office of Investigations, the primary investigative arm of DHS, was charged with preventing terrorist and criminal activity by targeting the people, money, and materials that support terrorist and criminal organizations. ICE OI assumed the responsibility for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States.

ICE has 27 principal field offices throughout the U.S. Utah's ICE Office of Investigations falls under the umbrella of the Special Agent In Charge (SAC) in Denver, Colorado. Utah ICE OI falls under the supervisory umbrella of the Assistant Special Agent In Charge (ASAC) located in Salt Lake City. There are currently 30 ICE special agents working in the state of Utah, assigned to offices in St. George, Provo, Salt Lake City and Ogden. Five of these agents are supervisors. Therefore, 25 ICE "field" special agents are responsible for covering 29 Utah counties. As the investigative arm of DHS, these 25 special agents are tasked with investigating:



- immigration crime
- human rights violations/human trafficking
- narcotics, bulk cash, weapons and other types of smuggling
- financial crimes
- cybercrime — proliferation of internet child sexual exploitation
- import/export violations
- vulnerabilities to sabotage, attack or exploitation of critical infrastructure industries
- counter proliferation — preventing illegal foreign acquisition of arms and sensitive technology.<sup>116</sup>

Consequently, as ICE OI focuses on its more expansive national security mission, much of the immigration-related criminal activity in Utah has been neglected for the sake of the broader enforcement mission.

## **B. ICE DETENTION AND REMOVAL LIMITATIONS (DRO)**

No enforcement entity has unlimited resources. The housing of arrestees is an ongoing consideration that must be factored into all operational and strategic decisions. ICE is unable to process and remove every illegal alien largely because of bed space limitations. Relying on national allocations, ICE DRO has between 200 and 250 beds per month in Utah. This means that a maximum of 250 illegal aliens can be housed in Utah while awaiting administrative deportation proceedings. Making hard choices to determine which criminal aliens warrant processing for removal is a continual process. ICE receives frequent criticism for allowing *any* illegal aliens that have been arrested to be released back into the community, but bed space limitations largely dictate such decisions. As stated by Ogden Police Chief Jon Greiner’ “...strategies must carefully consider which, where and how any arrestees will be detained. Resource limitations largely dictate that the worst of the worst become the focus. Immigration enforcement is no different.”<sup>117</sup>

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<sup>116</sup> U.S. Immigration and Customs Enforcement, ICE Office of Investigations, “Facts Sheet,” [http://www.ice.gov/pi/news/factsheets/investigation\\_FS.htm](http://www.ice.gov/pi/news/factsheets/investigation_FS.htm) (accessed July 12, 2008).

<sup>117</sup> Greiner, interview.

The reality that ICE DRO must have complimentary resources to support state and local law enforcement efforts cannot be overemphasized. It is imperative for any state or local agency to consult closely with its local ICE counterpart regarding logistical realities and bed space limitations. If there are no places to house arrestees, there is no need to employ resources to investigate or pursue such violations. This is arguably the most significant prohibitive factor for any agency considering involvement in immigration enforcement at the local level. Immigration enforcement must be confined to a very limited scope. Development of any state and local immigration enforcement strategy must be done in close coordination with ICE DRO.

Utah law enforcement leaders are correct in their assessment that immigration-related issues are not being adequately addressed by ICE. Drawing attention to this reality is not intended to denigrate the work that ICE OI or DRO is doing. A clearer, more accurate depiction of ICE investigative resources in Utah will alleviate unrealistic expectations and allow for the formulation of realistic immigration enforcement strategies. The majority of Utah law enforcement leaders polled agreed that immigration enforcement should be a federal function. Nevertheless, 79% also indicated that if ICE was spread too thin to address the burgeoning illegal alien problem in Utah, their agency would choose to participate with them in collaborative immigration enforcement efforts. This shows the willingness of state and locals to collaborate if the need for their intervention arises. ICE's limited resources present that need.

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## **VII. EVIDENCE FOR INCREASED IMMIGRATION ENFORCEMENT IN UTAH**

Crimes with a nexus to national security should be prioritized. As the report generated by the House Subcommittee on Homeland Security issues revealed,<sup>118</sup> Mexican cartels, and the smuggling rings and gangs they leverage, control routes into the U.S. and pose substantial challenges to U.S. law enforcement. Crimes with a transnational nexus and crimes placing Americans in imminent harm should be the focus. Crimes such as gang activity, drug trafficking, fraudulent document manufacturing and distribution, smuggling of aliens, contraband and cash, and drunk driving should take precedence over civil violations. The surveys and interviews reveal that these types of crimes committed by illegal aliens are on the rise in Utah communities and throughout the nation. Focusing on national security related crime and crimes posing immediate public safety concerns will also avert a flooding of the jails and court system with mere administrative violations. The crimes discussed in the following sections pose immediate risks to Utah communities, yet are being neglected as they are largely considered to be ICE issues. Local and state involvement in immigration enforcement can ensure that such crimes receive more attention.

### **A. TRANSNATIONAL GANGS**

The survey of Utah law enforcement leaders indicates concern about gang violence. 69% agree that threats of terrorism, transnational gangs and international drug trafficking warrant new approaches to law enforcement that utilize immigration authority as another local enforcement tool. In a world where globalization and ease of transnational mobility is on the rise, gang culture originating elsewhere is becoming a U.S. problem. Immigration authority is a critical tool in combating gangs that seem to attract many disenfranchised illegal aliens, particularly those who have spent time in Central America, prison, or both. Local law enforcement agencies throughout the nation have realized the value of partnering with ICE where foreign gangs have taken root.

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<sup>118</sup> *A Line in the Sand: Confronting the Threat at the Southwest Border.*

Extracting these gang members from communities using immigration violations makes perfect enforcement sense, but simply removing them from the U.S. is rarely a final solution. It is not uncommon for gang members to find their way back to the U.S. within weeks of being deported. After being deported from the U.S., they arrived in their country armed with urban U.S. street gang experience and hardened with U.S. prison savvy. Gang members who commit crimes in their own countries often flee to the U.S. to hide, engage in criminal activity, and earn income until they are caught and deported, a cycle that often repeats itself again and again.<sup>119</sup> This warrants a strategic enforcement approach employing state and local participation, as the violence perpetrated by these gangs directly impacts local communities.

In his book *From the Terrorists' Point of View*, psychologist Fathali Moghaddam argues that terrorists are not born, but evolve out of social and cultural contexts.<sup>120</sup> Many parallels can be drawn between the factors leading to the rise of Islamic terrorism and those feeding the proliferation of transnational gang members choosing crime and violence as their social recourse. The brutal civil wars that ravaged Central America in the 1980s displaced tens of thousands of Central Americans from their homes into the U.S. Hundreds of thousands of Central Americans refugees immigrated to American cities where their ethnic identities and social contexts translated into an unforeseeable plague of crime and violence in the U.S.

The molding of ethnic identities and social attitudes and the development of indifference towards humanity experienced by many Central Americans is not unlike what occurred as a result of the brutal conflict between the Islamic forces in Afghanistan as they defended their land and ideology when invaded by the Soviets in 1980s. The Afghan conflict shaped and molded a new generation of radical fundamentalist Islamists, which has evolved into a globally significant phenomenon of terror. Like the survivors of

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<sup>119</sup> United States Agency of International Development, Bureau for Latin America and Caribbean Affairs Office of Regional Sustainable Development, "Central America and Mexico Gang Assessment," April 2006. [www.usaid.gov/locations/latinamericacaribbean/democracy/gangs\\_cam.pdf](http://www.usaid.gov/locations/latinamericacaribbean/democracy/gangs_cam.pdf) - (accessed May 15, 2008).

<sup>120</sup> Fathali M. Moghaddam, *From the Terrorists' Point of View: What They Experience and Why They Come to Destroy* (Westport, CT: Greenwood Publishing Group, 2006), 144.

the Afghan war, Central American refugees expanded their war-like horizons. Upon fleeing their war-torn countries, few shed their warlike ways.<sup>121</sup> In the U.S., many are involved in street gang activity. Their crimes and brutality have now plagued virtually every U.S. community, large and small. Utah has not remained unscathed.

To determine the extent of foreign national gang activity in Utah, this researcher worked closely with ICE officials in coordinating efforts to gather intelligence relating to foreign national gang activity. The ICE lead gang operation targeted various parts of Utah to illustrate how gang activity can be countered by multi-agency, multi-jurisdictional efforts. Beginning in June of 2008, ICE OI joined forces with local gang police officers. Intelligence was exchanged, culminating in a statewide surge to locate, arrest, prosecute and deport dangerous transnational gang members. Collaborative operations were conducted in Provo, Ogden, St. George and Salt Lake City. After the dust had settled, 117 transnational gang members representing numerous notorious international street gangs had been arrested. Among other things, this operation yielded a Mara Salvatrucha (MS-13)<sup>122</sup> training and recruiting DVD that included instructions on how to kill police officers and rival gang members. “Who would have thought that this many gang members would have been found in sleepy Utah,” commented one of the federal prosecuting attorneys. These are violent gang members using Utah communities as their canvas for crime and violence. This operation was unique in that it was the first time that local, state and federal agencies had concertedly combined skill sets and authorities to

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<sup>121</sup> Stephen Johnson and David B. Muhlhausen, North American Transnational Youth Gangs: Breaking the Chain of Violence. Heritage Foundation, March 21, 2005 Backgrounder #1834 <http://www.heritage.org/research/urbanissues/bg1834.cfm> (accessed August 4, 2008).

<sup>122</sup> In the early 1980s a civil war erupted in El Salvador killing as estimated 100,000 people. In addition, it is estimated between one and two million people have immigrated to the United States as a result of the unstable environment in El Salvador. The first large population of El Salvadorian refugees settled in the Rampart area of Los Angeles. This influx of immigrants looking for low cost housing and employment was not readily welcomed by the Mexican-American population who were already residing in that area. The area was already plagued with gangs and crime. These immigrant Salvadorian youth and young adults were soon were victimized by local gangs. A group of Salvadorian immigrants created a new gang calling themselves Mara Salvatrucha also known as MS-13. It is believed they got their name from combining the name of “La Mara”, a violent street gang in El Salvador with Salvatruchas, a term used to denote members of the Farabundo Marti National Liberation Front. This was a group of Salvadorian peasants trained as guerilla fighters. The “13” was added to pay homage to the California prison gang, the Mexican Mafia. Members of this newly formed gang soon engaged in violent criminal acts. They quickly became known as one of the most violent gangs in the area because many of their founding members had experience or training in guerilla warfare, thus gaining a level of sophistication that superseded their rivals.

combat the scourge of transnational gang activity. The merging of authorities, resources and expertise was critical to the operation's success.

Commenting on the operation in northern Utah, Weber County Attorney Mark DeCaria expressed gratitude for the federal government's efforts along with local police in dealing with illegal immigrants who are gang members. DeCaria said this particular segment of the population is to blame for a lot of crimes involving drugs and guns. Citing recent racketeering prosecution of several local violent gangs, U.S. Attorney Brett Tolman said his office also has the option to go after these gangs as criminal organizations.<sup>123</sup>

During the operation this researcher observed the ICE detention area where these gang members were interviewed, printed, photographed and processed for deportation proceedings. Arrestees are routinely asked about previous arrests by law enforcement. It was disconcerting to hear many respond that they had been encountered numerous times before by city police for "just tickets," but never arrested for anything. When asked why they were cited by the police, "no license" was often their response. Had more in-depth scrutiny been exercised, perhaps through the involvement of ICE or an officer with 287(g) delegation, these gang members would have been detected sooner. The researcher observed as two gang arrestees were processed by ICE agents. Both were adorned with gang-related tattoos. Each had been previously convicted of serious felony crimes, served their sentences in California, and been deported from the U.S., only to quickly sneak back across the U.S. border and make their way to Utah. The reality that many of these violent gang members are choosing Utah as their playground after being flushed from bigger cities should be cause for concern. The missed opportunities when these gang members were previously encountered by police is reminiscent of how some of the 9/11 hijackers slipped by local police prior to that fateful day. When a suspected foreign national piques the interest of local police, closer scrutiny could avert something more tragic. 287(g) can help fill such enforcement gaps.

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<sup>123</sup> Geoffrey Fattah, "Fed Crackdown on Utah Gangs Nets 50 Arrests." *Deseret News*, July 16, 2008. <http://deseretnews.com/article/1,5143,700243460,00.html> (accessed September 9, 2008).

## **B. ALIEN SMUGGLING: A PUBLIC SAFETY AND NATIONAL SECURITY ISSUE**

State Troopers play a vital role in detecting illegal aliens who travel U.S. highways and byways. Utah can benefit from the experience of Colorado State Troopers who are currently participating in 287(g). Colorado State Troopers were a subset of the 287(g) participants who were solicited to participate in the survey. Colorado's participation in the 287(g) program has proven to be an effective and prolific venture. Loads of smuggled illegal aliens destined for various parts of the U.S. depart from the U.S.-Mexico border and travel remote stretches of highways in an attempt to avoid detection. The survey of Colorado State Troopers indicates that many smuggling loads have been intercepted — loads originating from the southern border in Arizona or California venturing eastbound on I-70 to the nation's interior.

Loads of smuggled aliens often encountered by State Troopers when stopped for routine traffic violations. ICE interaction with the Utah Highway Patrol has revealed that highway encounters in remote areas in Utah frequently yield evidence of narcotics trafficking, fraudulent document possession, and bulk cash smuggling — a method used by criminals and terrorists to move large sums of illicit funds. Often, ICE is unable to respond due to logistical prohibitions or manpower shortages.

The nation's highways have become far more dangerous since they have been turned into smuggling thruways for criminals from Mexico and elsewhere. In the past year (2007-2008), three carloads of smuggled aliens traveling through Utah were involved in rollover accidents, killing many of the smuggled human cargo. Nineteen-year-old Travis Smith of Mesa, Arizona, was killed in 2002 by a carload of illegal aliens being smuggled from the Arizona border to Pennsylvania. The accident occurred near Monticello in southeastern Utah, as the car driven by illegal alien smuggler Isidro Aranda-Flores plowed head-on into Smith's 1966 Mustang. At the [Aranda-Flores'] sentencing, Travis' mother Tanya Lowe was not buying the tiresome excuses that essentially blame the victim. "People say my son was just in the wrong place at the wrong time," she said. "My son was not in the wrong place at the wrong time ... The illegal person transporting illegals was in the wrong place at the wrong time." Travis'



dad Wayne Smith was too distraught to attend the sentencing: But outside court, he said that the law should be altered so that being in the United States illegally would warrant harsher sentencing, just as recklessness and intoxication do, in traffic-accident cases. The killer received a hand-slap sentence, just six and a half years in prison for ending the life of a teenager.<sup>124</sup>

ICE was tasked with responding to a congressional inquiry from Senator Orrin Hatch's office asking what ICE proposes to do to counter the high volume of alien smuggling loads encountered by the state police in southeastern Utah. The southeastern portion of Utah, specifically along Federal Highway 191, has been known to be a major alien and drug smuggling route originating from the U.S.-Mexican border in Arizona. According to the National Drug Intelligence Center (NDIC) Western Region Drug Threat Assessment, Mexican Drug Trafficking Organizations (DTO) transport cocaine, Mexican-produced methamphetamine, marijuana, and black/brown tar heroin by utilizing the Interstate highways throughout the State of Utah. These arterial highways are commonly referred to as Corridor B. Subsequent to the narcotics being smuggled into the State of Utah, Mexican DTO's typically bulk cash smuggle the illegal proceeds back to Mexico in the same manner.<sup>125</sup> The following three (3) Interstate highways are the primary transportation routes utilized by Mexican DTO's:

- Interstate 15 starts in San Diego, California, intersects with Interstate 70 in the State of Utah, and ultimately terminates at the Sweet Grass, Montana, Port of Entry (POE). Interstate 15 is the primary artery that enables transportation north to south within the State of Utah.
- Interstate 80 starts in San Francisco, California, extends eastward, and ultimately terminates in New York City, New York. Interstate 80 is the primary artery that enables transportation east to west within the State of Utah.

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<sup>124</sup> Crime Victims of Illegal Aliens. <http://www.immigrationshumancost.org/text/crimevictims.html> (accessed June 27, 2008)

<sup>125</sup> Charles Johnson (Immigration and Customs Enforcement Special Agent), interview by author, Salt Lake City, Utah, September 12, 2008.

- Interstate 70 originates in the northeast region of the United States and extends throughout the Midwest. Interstate 70 ultimately connects into Interstate 15.

Salt Lake City, Utah, is one of the principal distribution centers for illicit drugs in the Western Region. Once in Salt Lake City, wholesale quantities are broken down into smaller quantities for distribution. Utah is bordered by Nevada. Las Vegas, Nevada is approximately five hours southwest of Salt Lake City, Utah. In addition, there are several small casinos located just over the Utah State line. The small communities that these casinos are located in are referred to as “parasite towns.”<sup>126</sup> Because of the close proximity to the Nevada casinos, Utah is an attractive transportation route for money couriers. Furthermore, Utah is transited by DTO’s making deliveries from the west coast to the east coast, and vice versa.

Many vehicle rollover accidents involving smuggled aliens have occurred on Highway 191 in Utah, which feeds into Interstate I-70, allowing access from west to east. An accident in April of 2007 resulted in the deaths of eight smuggled aliens.<sup>127</sup> ICE successfully presented the case for federal prosecution, but logistics made this an extremely difficult venture since the nearest ICE office is located more than a six hour drive away. State Troopers report frequently citing drivers for simple traffic violations, then letting them continue on their way while strongly suspecting that the passengers in the vehicle were smuggled human cargo. The lack of immigration authority and scarce ICE resources prohibit effective policing of this criminal element in remote areas of Utah. Remote stretches of highway has been a longtime concern for ICE, which lacks the manpower to respond to every suspected smuggling load encountered by Utah State Troopers.

According to ICE agents, arrested alien smugglers have divulged that they use Highway 191 because it is patrolled less than I-15 and it provides convenient access to I-

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<sup>126</sup> Johnson, interview.

<sup>127</sup> Ben Winslow, “Utah Rollover Kills 8, Injures 7,” *Deseret Morning News*, April 17, 2007. FindArticles.com. [http://findarticles.com/p/articles/mi\\_qn4188/is\\_20070417/ai\\_n19012831](http://findarticles.com/p/articles/mi_qn4188/is_20070417/ai_n19012831) (accessed September 13, 2008).

70 for easy transit to the Midwest, South and East coast states where the human cargo or other contraband can be delivered. The lack of ICE presence in the southeast corridor of Utah has left this conduit to the U.S. open for those who smuggle aliens, contraband and, potentially, terrorists through the U.S. Given concerns for national security and criminal enterprises, this is a critical thoroughfare warranting an increased law enforcement presence. The prospect of cross-designating Utah Highway Patrol Troopers with immigration authority will increase the ability of those agencies to ensure that illegal aliens they encounter are handled appropriately and in the best interest of the nation.

**C. DOCUMENT FRAUD AND IDENTITY THEFT: A NATIONAL SECURITY CONCERN**

The agencies surveyed indicated that document fraud was of serious concern. 91% agree that those who make, broker and purchase fraudulent drivers licenses, social security cards and immigration documents pose a legitimate national security threat. With the potential for identity theft and document fraud to be used as cover by those seeking to inflict harm on America, law enforcement should vigorously pursue these violations. Many choose to believe that we can continue to ignore the illegal aliens that stream across our borders without compromising our ability to screen out those with evil intentions.<sup>128</sup> In her book, *Invasion: How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores*, author Michelle Malkin is highly critical of the now-defunct Immigration and Naturalization Service and the U.S. government in general, asserting that the 9/11 attacks were facilitated as “we unlocked our doors, spread out the welcome mat, and allowed these foreign visitors to plot the death and destruction in the comfort of our home. And they could do it again in a heartbeat.”<sup>129</sup> Many choose to ignore that the use of fraudulent identification documents was an integral part of the deadly 9/11 scheme, largely facilitated by illegal aliens originating from south of the U.S. border.<sup>130</sup>

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<sup>128</sup> Malkin, *Invasion*, 29.

<sup>129</sup> *Ibid.*, ix.

<sup>130</sup> *Ibid.* 32.

A month before the September 11 attacks, hijackers Hani Hanjour and Khalid Almihdar went to the parking lot of a 7-Eleven store in Falls Church, Virginia, where scores of Hispanic day laborers had congregated looking for work. “Like moths to a light, the al Qaeda operatives flocked to these alien outlaws for unwitting assistance in their murderous plot.”<sup>131</sup> These two terrorists were not looking for someone to mow their lawn or help them plant trees for the day. These two were looking for what many have determined to be a seemingly harmless offense of obtaining fraudulent IDs. Within minutes, the terrorists encountered Luis Martinez-Flores, an illegal alien from El Salvador who had been in the country undetected since 1994. According to court records, Martinez-Flores agreed to help the murderers to fraudulently obtain Virginia state photo identification cards. With Martinez-Flores’ assistance, hijackers Hani Hanjour, Khalid Almihdar, Majed Moqed, Salem Alhamzi and Ziad Jarrah obtained the fraudulent IDs. The first four used these documents to board American Airlines Flight 77 at Washington Dulles International Airport the next month. It is believed that Jarrah was at the controls when Flight 93 crashed into the field near Shanksville, Pennsylvania. Martinez-Flores was paid \$100 for his services.<sup>132</sup> Fellow hijackers Abduaziz Alomari and Ahmed Saleh Alghamdi also enlisted illegal aliens for similar services. They paid their two El Salvadoran facilitators \$50 and \$80, respectively.<sup>133</sup>

In September of 2006, ICE Special Agents in Ogden, Utah, rallied to investigate numerous employees of a local meat packing plant who were illegal aliens who had allegedly assumed the identities of U.S. citizens to obtain employment. Ogden’s investigation was a microcosm of a national ICE initiative to combat the plague of identity theft, which leaves a path of devastated victims left to reconcile damaged credit ratings along with social security and back tax problems. The investigation culminated in

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<sup>131</sup> Malkin, *Invasion*, 29.

<sup>132</sup> *Ibid.*, 33.

<sup>133</sup> *Ibid.*, 34.

the largest concerted crackdown in ICE history when ICE agents raided six Swift & Co. meat-processing plants in six U.S. states, arresting about 1,300 illegal immigrant employees.<sup>134</sup>

Ogden, Utah ICE agents employed innovative investigative techniques to painstakingly investigate the true identities of as many as 300 Swift employees. Substantial evidence was gathered to support the allegations of criminal fraud and identity theft being perpetrated by numerous Swift employees. The ICE agents solicited the assistance of the Cache County Attorney's Office in Logan, Utah in this efficient and prolific enforcement endeavor. Within a month, ICE agents presented 144 felony forgery and identity theft cases for prosecution. The 144 cases presented for prosecution by Ogden ICE agents accounted for 67% of all prosecutions associated with the initiative targeting Swift meat packing plants around the nation.<sup>135</sup>

While investigating the identity theft cases, ICE agents also targeted a criminal enterprise that was the primary source of documents used by the Swift employees. The undercover sting exposed an organization operating on both sides of the U.S. border, brokering authentic birth certificates and social security cards obtained from home burglaries, vehicle brake-in thefts and robberies. As a result, subjects in Utah and Texas were arrested and indicted in federal court and charged with the Sale of Citizenship Papers and Aggravated Identity Theft.<sup>136</sup> This organization had thrived on supporting illegal aliens among the masses of hardworking illegal aliens who were just "doing the jobs that Americans won't do," as cited by many supporters of cheap labor provided by many illegal aliens.

Simply entering without inspection is rarely an illegal alien's only offense.<sup>137</sup> Those who come here to work are readily committing document fraud violations and misuse of social security numbers, both felonies. These crimes have become so

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<sup>134</sup> U.S. Immigration and Customs Enforcement, Worksite Enforcement. August 14, 2007. [http://www.ice.gov/pi/news/factsheets/worksite\\_operations.htm](http://www.ice.gov/pi/news/factsheets/worksite_operations.htm) (accessed December 10, 2008).

<sup>135</sup> Melissa Ruiz (ICE Resident Agent In Charge), interview by author, Salt Lake City, Utah, July 12, 2007.

<sup>136</sup> Ruiz, interview.

<sup>137</sup> Chard, interview.

commonplace that the U.S. Attorney's office in Utah does not accept such cases, except where a person's full identity has been assumed and significant financial loss can be attributed to the assumption of the victim's identity. If prosecutors accepted every case of possession and/or use of a fraudulent document, their offices would be inundated by these cases alone.<sup>138</sup> This is a perpetual crime spree, as procurement and use of these fraudulent documents is an ongoing offense. False documents are evidence of crimes such as identity theft, forgery, false statements, etc. and other crimes routinely committed after one sneaks into the U.S. or overstays a temporary visa. The fraudulent documents provided by illegal aliens were used by the terrorists to carry out the scheme killing nearly 3000 Americans on 9/11 — documents provided by and readily used by seemingly innocuous illegal aliens.

The general public hears little of the document black market and behind-the-scenes dealings of those who “simply come here to work.” As employment continues to be the magnet for illegal aliens, and as long as employers fear they will be punished for hiring illegal aliens, fraudulent documents and identity theft will continue to plague the country. Criminally charging employers who knowingly hire illegal aliens only scratches the surface. Aliens will gravitate to other companies vulnerable to their fraud. It has been argued that illegal aliens commit crimes at lower rates,<sup>139</sup> but these statistics do not reflect crimes that few U.S. Attorneys choose to prosecute, such as forgery, possession of fraudulent documents and identity theft. ICE receives frequent complaints from frustrated citizens who can't understand why ICE is not pursuing criminal prosecution of the illegal alien who has been using their child's social security number, or the illegal alien who was discovered to be working under the name and biographical information of a deceased U.S. citizen, a U.S. citizen who is sitting in prison, or a U.S. citizen whose birth certificate was stolen during a burglary. The reality of limited resources dictates how many of these complaints ICE can address as it pursues its diverse investigative

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<sup>138</sup> Dustin Pead (Assistant United States Attorney, District of Utah), interview by author, Salt Lake City, Utah, February 28, 2008.

<sup>139</sup> Kristen F. Butcher and Anne Morrison Piehl, “Crime, Corrections and California: What Does Immigration Have to Do With It?” Public Policy Institute of California (PPIC), Volume 9, Number 3. February 2008. <http://www.ppic.org/main/publication.asp?i=776> (accessed December 10, 2008).

mission, with immigration enforcement being only a small part of what the agency is tasked with doing. The 287(g) participants indicated that possession of fraudulent documents is second only to drunk driving as the crime most readily committed by the illegal aliens they process for deportation. As employers increasingly require documents to verify employment eligibility, civil violators, or the “economic aliens,” will become less commonplace as document brokers are aggressively targeted. By focusing on the supplier of those documents — the unscrupulous vendors who broker identities — state and local police can disrupt and deter the extremely pervasive crime.

## **VIII. STRATEGIC RECOMMENDATIONS FOR 287(G) IMPLEMENTATION**

### **A. THE CHILLING EFFECT ARGUMENT**

This thesis asserts that crime supporting illegal immigration is rampant throughout the nation. Nevertheless, finding a balance between aggressively targeting such crimes, and alienating the immigrant community, presents a significant conflict for state and local agencies. The “chilling effect”<sup>140</sup> is the most salient objection to local police engaging in immigration enforcement. When surveyed, Utah law enforcement agencies did not share the same level of concern as conveyed in the literature. Only 4% believe that immigrant community relations would be a prohibitive factor in their participation in immigration enforcement. Perhaps most telling was their response to the statement, “I will accept a certain level of serious criminal activity within the immigrant community rather than do something that might cause a chilling effect in the immigrant community.” They were asked if they agreed or disagreed. 90% disagreed with that statement, indicating strong deference to safeguarding their communities over the potential of causing a chilling effect.

Although some immigrants might always be reluctant to cooperate with local police, the need for state and local police agencies to safeguard their communities is paramount. Local agencies that oppose the prospect argue that the “chilling effect” would adversely affect other police functions. It is equally arguable that foregoing local immigration enforcement to preserve sources of information in the community is an excuse to avoid involvement in immigration law enforcement. When asked what he thought about the chilling effect, Chief Greiner stated, “The Chilling effect is used an

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<sup>140</sup> National Immigration Forum, “State and Local Police Enforcement of Immigration Laws, Immigration Law Enforcement Act of 2006,” (Washington, D.C.:National Immigration Forum, 2006) <http://immigrationforum.org/DesktopDefault.aspx?tabid=843> (accessed October 27, 2007).



excuse for their non participation or unwillingness to enforce immigration law.”<sup>141</sup> Ogden Police Chief Jon Greiner asserts that no empirical evidence exists to support the chilling effect argument.

Jessica Vaughan, of the Center for Immigration Studies, says the argument that the 287(g) program will lead to less cooperation with police from the immigrant community “is a complete myth and not supported by any kind of empirical or anecdotal evidence [she has] ever seen, and most ICE and law enforcement will tell you it’s complete nonsense. . . Victims of crime simply aren’t going to be subject to removal orders — it’s not going to be a priority.” The argument “is promulgated by organizations that just don’t like immigration law enforcement,” Vaughan says, and that, furthermore, most agencies seeking the 287(g) agreements emphasize it won’t be used to target victims, witnesses or informants but rather criminals.<sup>142</sup>

The assumption that public safety interests should be secondary to the notion that illegal aliens might be significantly reluctant to report crime because they fear deportation is questionable, if not flawed altogether. A current 287(g) survey participant stated, “Numerous immigrant rights/community groups were against/scared of our ventures in 287(g) initially. Our efforts to explain the program and subsequent efforts in enforcement brought the community to support us when they saw we remained true to our stated intentions.” The notion of communicating the department’s intentions and consistently applying the cross-delegated immigration authority will foster trust that can serve to temper criticisms of the opposition. A recurring theme that emerged from the survey of current 287(g) participants indicated that the media and immigrant advocacy groups will closely monitor how the state and locals enforce immigration laws. Survey respondents also indicated that both the media and advocacy groups will overstate the problems, both perceived as well as legitimate, and understate positive aspects — the public safety impact that their participation has on the community at large, to include the immigrant community. Engaging opposing stakeholders early, even before a strategy is

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<sup>141</sup> Greiner, interview.

<sup>142</sup> Jessica Vaughan. Center for Immigration Studies. “Immigration Enforcement Disrupts Criminal Gangs in Virginia: States Should Expand Involvement of Local LEAs.” <http://www.cis.org/articles/2008/gangrelease.html> (accessed October 27, 2008).

implemented, can reduce propensities for fault finding among very complex cultural contexts in both the immigrant and police communities.<sup>143</sup>

## **B. TRUST AND CREDIBILITY: AN IMMIGRANT ADVOCATE'S PERSPECTIVE**

As there are a seemingly innumerable number of immigrant rights advocates, one was selected in order to best illustrate the deep-rooted mistrust and misperception that exists. The story of Tony Yapias follows; he was provided the basic tenets of the research project and his opinions regarding the supposed “chilling effect” were elicited.

Mr. Yapias is one of the most vocal immigrant advocates in Utah, and arguably the most renowned. The media scrambles to get his take on anything that even remotely impacts Latinos and the immigrant community in general. Virtually every immigration enforcement operation in Utah is subject to his commentary and critique. He has been referred to as “Salt Lake's local professional Latino complainer.”<sup>144</sup> He sponsors a website, he hosts a radio program, and he is the primary spokesperson for the Utah immigrant community. His comments about ICE are rarely complimentary, and his commentaries are usually centered on what he alleges are ICE's heavy-handed tactics and insensitivity for the families of those who were left to pick up the pieces after a loved one is arrested and deported. He believes that ICE's enforcement efforts are essentially “racially driven.”<sup>145</sup>

He was aware that the Weber County Sheriff's Department would be participating in 287(g). He has also called for an internal investigation into the enforcement practices of the Ogden Police, who are allegedly racially profiling and pulling people over based on their skin color and not for valid traffic violations. His complaints came in response to a gang operation that the Ogden Police Department worked jointly with ICE to identify

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<sup>143</sup> A Police Chief remarked that the culture of local law enforcement agencies, i.e., use of force incidents, complaints, officer involved shootings, school resource officers, etc. will play a significant role in the acceptance and effective implementation of immigration enforcement at the local levels.

<sup>144</sup> Voice of Deseret, “[Immigration And Customs Enforcement \(ICE\) Assembles A Dedicated Utah Team To Arrest And Deport Illegal Aliens](http://voice-of-deseret.blogspot.com/2007/12/immigration-and-customs-enforcement-ice.html),” <http://voice-of-deseret.blogspot.com/2007/12/immigration-and-customs-enforcement-ice.html> (accessed August 25, 2008).

<sup>145</sup> Yapias, interview.

and arrest gang members in Ogden. Mr. Yapias readily speaks out about perceived immigration-related injustices, and advocates on behalf of those who fall victim to the present dysfunctional immigration system and seemingly arbitrary application of its laws.

I am a native of Junin, Peru. In 1981, when I was 14, I immigrated to the United States. My father was a sheepherder who immigrated to the U.S. on a visa designated for those with expertise that is hard to find here. My Dad worked on a large ranch in Wyoming. When I was growing up, my family didn't have much, but we believed in the value of hard work and the importance of family. I received a bachelor's degree in International Relations from Brigham Young University and then went on to serve as Director of the Utah State Office of Hispanic Affairs under Governors Michael Leavitt and Olene Walker. I also worked as a probation officer in Utah and I couldn't help but notice the lack of Hispanic officers; most were white and inherently insensitive to Latinos. My kids play with white kids; some of the fathers are police officers. I have to say that my kids are looked at differently and they are treated differently.

I eventually moved to Latino advocacy work. Right now, I am a columnist for the weekly newspaper *El Estrandar* and I host a weekly radio program "Pulso Latino" on Radio Exitos, 1550 AM in Salt Lake City. I am also the Founder/Project Coordinator of Proyecto Latino de Utah.<sup>146</sup> I also have an immigration rights website as a forum for my people.

I think our current immigration laws are in dire need of revamping. For example, children are now the victims of immigration enforcement — parents are deported, leaving children here with single parent families, or worse, with relatives other than their natural parents. I can only hope for the incoming administration — hope that change will come with a new President with a new perspective. I really respect the police, but I'm critical of the culture and the tactics. ICE is a different story.

I can't tell you of the number of families that ICE enforcement efforts have left in shambles, struggling to survive after the primary breadwinner had been arrested and deported. In Northern Utah recently, many illegal aliens have contacted me to get financial assistance to *self deport*, fearing that their being encountered, arrested and deported was just a matter of

time given the increased enforcement efforts. ICE has generated nothing

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<sup>146</sup> Proyecto Latino de Utah, "Tony Yapias," <http://www.utahlatinos.com/author.html> (accessed August 28, 2008)

but fear in the immigrant community, only making fear of the police worse.

Let me tell you a story. Immigration Officers appeared at the door of a Hispanic woman. The two officers were in plain clothes. She didn't know they were immigration officers at the time. They simply identified themselves as "police" and asked to speak to her husband, who had reportedly been involved in a minor traffic accident the day before. They were doing a follow-up investigation and "needed to speak with him." She told the officers that her husband was not home but she would call him immediately. She did so and the man arrived at his residence within minutes. When he got home, the two officers asked the man his name and then identified themselves as immigration officers. Their tone and demeanor immediately changed. They told him that he was under arrest for failing to comply with an immigration judge's final order of removal. He was handcuffed "very tightly and uncomfortably" by the officers who had lied about the traffic accident. He was then taken away without being able to say goodbye to his wife and children. They lied to his wife and she had trusted them. She cooperated with them and called him and told him to come home quickly.

The man had a few minor convictions, but why do the police have to lie to do their job? How can immigrants ever trust the police when things like this happen? Truthfully, the man was my brother. It's just one man and one story, but don't you see how immigration impacts real people with real lives and real people that love them — like my brother.

Mr. Yapias' perspective is crucial to this research. His perspective and the perspective of mainstream law enforcement represent opposite ends of the spectrum. These two vantage points need reconciliation if any progress is to be made in narrowing the division between the two camps. Mr. Yapias spoke freely about the very real human element that he believes is often overlooked in law enforcement planning and execution. Certainly ICE takes humanitarian issues very seriously and, in recent years, has done arguably more to address the humanitarian aspects of immigration enforcement than in years past; nevertheless, any time someone is deported, a rippling effect occurs and real lives are impacted.

But back to the question of how to proceed, given that laws must be enforced, and those who violate the laws *will* be impacted when discovered? Trust is the issue, and at

this moment, little trust exists between Mr. Yapias, a representative of the larger immigrant community, and the law enforcement community, particularly ICE.

This researcher referenced the DHS Office of Professional Responsibility, which investigates allegations of excessive force, corruption, and civil rights violations. Instances where bad cops have been weeded out, fired and even prosecuted were discussed. Concerns were expressed about such elements and the necessity to see that such activity is addressed and dealt with seriously and expeditiously.

Mr. Yapias continued:

I'm happy to hear that discriminatory actions and the trappings of racial profiling are taken seriously by law enforcement agencies. I'm also aware of the difficulties that law enforcement officers face as they work in areas with a high ratio of Latino residents. How they must walk on proverbial eggshells to avoid even the appearance of profiling. I know that ICE has a very tough job.

I agree that laws must be enforced, but humanitarian concerns must be considered as well. Any trappings of racism or civil rights violations must be quickly and seriously addressed.

I know that the immigrant community has become a target of many crimes committed by other immigrants. For that reason they live in fear from both the police as well as criminals who know they are powerless to speak out. I know that immigration enforcement actions could benefit my community and I acknowledge the need for the enforcement community to embrace the immigrant community and not further alienate them. I know that gangs, criminals, smugglers, human traffickers and drug traffickers are a huge problem and that has to be addressed. Opening the channels of communication and fostering trust with local police and the immigrant community is what is important.

I can tell you what it would take to develop, build upon and sustain levels of trust between the police and immigrants, legal or not. Open forums and community meetings where law enforcement representatives meet with leaders and members of the immigrant community where ideas and assurances could be made — transparency, where possible, about enforcement actions.

The issue of 287(g) is difficult. Articulating and communicating a real focus would likely place many at ease. Yet there will always be those who harbor distrust and fear simply because of their illegal status. I think that domestic abuse victims will always have a general reluctance to come forward fearing that police would turn them in to ICE to be deported. I

think there needs to be assurances made that victims of crimes would not be asked about their immigration status; only then such fears would be alleviated.

Community outreach and town meetings where the police and ICE could speak to the concerns of the immigrant community to address concerns and to at least explain perspective and objectives is crucial. I think that we need a citizen's review board, mentioning Weber County Sheriff's offices recent 287(g) enlistment. I suggest preempting the kick off of the 287(g) program by conducting outreach sessions — forums where the participating agencies and ICE could explain the programs and the program mission and focus. These forums could include clearly presenting the mechanism for redress and complaints, publicizing the contact information for the participating agency's internal affairs division and the DHS Inspector General's Office. In short, I think transparency and cross culture communication is critically needed as immigration enforcement issues are not going away.

I realize that there are consequences associated with those who choose to enter and remain in the country illegally. I have no tolerance for those who commit crimes.

The issue of trust was raised repeatedly in one form or another during the interview, presenting an excellent opportunity to discuss trust building and developing channels of communication via outreach to facilitate a better understanding of state, local and federal immigration enforcement priorities, and to establish a mechanism for grievances that was accessible, credible and trustworthy. As one of the most salient revelations to the researcher during this interview, Mr. Yapias acknowledged that, regardless of the potential for a chilling effect, police should not shirk their responsibilities. Mr. Yapias recognized that serious immigration-related crimes should not be ignored by the police.

The proposition of the outreach programs to engage the immigrant community and discuss ICE enforcement issues, 287(g), and the prospect of cross-communication is clearly vital. It became very apparent that the gap between the immigrant community and the law enforcement communities could narrow by instituting measures of communication. A willingness to see and respect the other's side rang true throughout the discussion.

As quoted by Henry Ford and used by Stephen M. Covey in *The Speed of Trust*, “If there is any great success in life, it lies in the ability to put yourself in the other person’s place and to see things from his point of view — as well as your own.”<sup>147</sup>

### C. “IMMIGRATION PEOPLE ARE UGLY”

As emphasized by Mr. Yapias, there is an inherent fear that immigrants have of the police. Much of that has to do with the distrust they have as a result of their own cultural roots, many being from Mexico, Central and South America, where law enforcement officials are often involved in corruption and civil rights are not as closely protected as they are in the U.S.<sup>148</sup> Much of their distrust or fear of U.S. law enforcement is based on their realization that they are in the U.S. illegally, and any contact with the police at any level could result in their being reported to ICE and ultimately removed. This is a concern for local police who work to establish a relationship with the immigrant communities that they have a responsibility to protect. Is it possible to enforce immigration law while attempting to foster trust with the local immigrant community? If a chilling effect does occur as a result of local officers enforcing immigration law, what is an acceptable balance to strike between addressing the criminal aliens and the risk of alienating the immigrant community?

Will Utah’s state and local agencies be able to enforce immigration laws without adversely affecting the immigrant community with their areas of responsibility? Mr. Yapias believes that an inherent distrust of the police would always exist, especially when a person knows he/she is here in violation of law. Yet few ever see the side of ICE investigative work that requires genuine and sincere displays of humanity.

In 2008, the researcher attended an award ceremony in Utah at the U.S. Attorney’s Office where an ICE Special Agent was recognized for his work on behalf of human trafficking victims. The following remarks were made during ceremony:

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<sup>147</sup> Stephen R. Covey, *The Speed of Trust: The One Thing That Changes Everything* (New York: The Free Press, 2006), 208.

<sup>148</sup> Yapias, interview.

Special Agent Leslie Derewonko of the Utah ICE office of Investigations has done an exemplary job aggressively pursuing human trafficking cases, while remaining as sensitive as possible to the needs of victims. Agent Derewonko has extended himself in order to work collaboratively with community organizations so that all can work together to better identify and serve victims. Agent Derewonko has taken the initiative to both receive and give significant training on the issue of trafficking and has worked hard to help build the foundation of the Utah Anti-Human Trafficking Task Force. Numerous victims have commented on his interpersonal manner and his willingness to take the time needed to understand the many layers involved in these cases. He understands that it often requires many contacts with potential victims to both establish trust and to fully understand their often complex situations.<sup>149</sup>

During the ceremony, a statement from one of the victims that Agent Derewonko has assisted was read:

I lived for many years as a victim in the United States, never telling anyone about what was happening to me and my children. More than anything, I wanted to find a way to talk with a police officer, to ask them for help and to tell what was happening. I never did, because I was always afraid that I would not be believed. My only experience with the police was in my home country. After I was able to leave the situation, I was given the opportunity to tell my story to immigration. At first, I was terrified to speak with immigration. It went against everything I was ever told I should do. I was sure the immigration agent would show up in a green police uniform and take me away immediately. But that is not what happened. When I finally told my story to Agent (ICE) Les, I felt like he really listened to me. He had a good face. I thought all people working with immigration were ugly. But his face inspired confidence and he was respectful to me. He seemed to really want to understand my situation, which made me feel more comfortable. And when he came to my first day in court it really showed me that he was doing everything he could to help. A few months ago, I would have never have believed that someone from immigration could have saved me from my situation and help me to change my life. If someone would have told me this was possible, I would have told them they were crazy.

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<sup>149</sup> Cecilia Swainston. Victim Witness Coordinator, U.S. Attorney's Office, Salt Lake City, Utah. Comments made during award ceremony in Salt Lake City, April 2007.



Agent Derewonko’s treatment of human trafficking victims — illegal aliens — is indicative of the approach that the proposed model should take. Outreach to the immigrant community to explain intentions of ridding Utah communities of the “worst of the worse” can alleviate fears. Such campaigns should include emphasis that pursuing administrative immigration violations should NOT be the intent of such a program. Such efforts will increase the potential for witnesses and victims to come forward with information about crime. Mr. Yapias was asked if he would support a state, local and federal collaborative enforcement approach if human trafficking and smuggling, document fraud, forgery and identity theft, gang activity and narcotics trafficking were made the primary focus. Mr. Yapias agreed, stating there should be no level of tolerance for these types of offenses.<sup>150</sup>

His endorsement of focusing on such crimes is a positive step toward bridging the gap between the immigrant community and the law enforcement community. It is both naïve and unrealistic to believe that the possibility of a chilling effect could ever be completely eliminated as state and local engage in any extent of immigration enforcement. There will always be a fear of law enforcement by those who are here in violation of law in the first place. According to Sheriff Jim Pendergraph, “you can’t freeze what is already frozen.”<sup>151</sup>

Since the propensity for a chilling effect is very real, law enforcement officers who have sworn to enforce the laws of this nation should ask themselves what should take precedence: protecting the community at large from crimes committed by members of the immigrant community, or disregarding many immigration-related crimes for fear that some of the immigrant community might be reluctant to come forward as victims or witnesses? This question was posed to Utah law enforcement leaders as the following statement:

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<sup>150</sup> Yapias, interview.

<sup>151</sup> James Pendergraph (Executive Director of State and Local Coordination, Immigration and Customs Enforcement), interview by author, Phoenix, Arizona, April 2, 2008.

*The overall security and safety of my community would take precedence over the possibility that some level of a chilling effect might occur if my department participates in immigration enforcement.*

A resounding 95% of Utah law enforcement leaders agreed that overall safety and security of their community is their primary concern. Yet as dedicated and conscientious leaders, most agreed that the needs and concerns of the immigrant community cannot be neglected. So how does an enforcement leader mitigate the chilling effect from becoming overly prohibitive?

#### **D. OUTREACH CAMPAIGN**

Effective communication is the key. Any department considering participation in 287(g) should launch a media campaign publicizing its intentions and reasons for 287(g) participation. Publicity can mitigate concerns that local police are acting as immigration agents, which might cause civil violators to remain in hiding. A well-executed media campaign can send the message that victims and witnesses will not be subject to immigration status scrutiny. Outreach efforts should include education about visas and other forms of discretionary relief available to victims and cooperating witnesses. They should express that civil immigration violations are not the department's concern, and emphasize that disrupting criminal activity and violence associated with illegal immigration is the focus. Police are not to use their administrative authority without well-articulated justification. They should clarify that administrative violations will be used as additional enforcement tools to remove suspected criminals and other priority aliens from the community. This very strict focus can alleviate the concerns that local police will be used for sweeps and mass roundups.

Davidson County Sheriff Daron Hall attributes his department's success to employing such a campaign that made his program unique. In hopes of transparency, Sheriff Hall coordinated an Immigration Advisory Council, which was the first of its kind to be formed in the United States before 287(g) program approval. Sheriff Hall said that

I never expected members to agree and actually appreciate the challenges. However, just as the council's purpose statement indicates, I do expect

members to carry factual information to the immigrant community and community at large. The dialogue with this group, although sometimes contentious, will go forward, and I am confident the result will be improved policies and procedures.<sup>152</sup>

Reaching out to the community will be critical for any agency that undertakes this 287(g) venture. Yet, the immigrant community will likely be wary of law enforcement no matter what message is broadcast. Many realize their illegal status and many possess fraudulent documents if they are here to work. As stated by 287(g) participant Sheriff Don Hunter, “I haven’t had that experience of people not coming forward in the most heinous crimes, serious rapes, or a murder,” he said. “Our experience has been the reverse.” Sheriff Hunter blamed illegal immigration for many local crime problems, especially gang-related violence. Immigrant communities, including Haitians and Mexicans, already have strained relations with the police, he said, adding that he was not worried that closer cooperation between his officers and immigration agents would make things worse.<sup>153</sup> The decision to ignore certain crimes being committed by illegal aliens because a department feels that to address those crimes would alienate a certain section of the community is a choice that each respective department will need to make.

#### **E. CHECKS AND BALANCES — ADDRESSING CLAIMS OF RACIAL PROFILING AND DISCRIMINATION**

Immigrant advocates fear that state and local police will engage in profiling and discrimination if endowed with immigration authority. Political support for immigration enforcement can be fleeting if the proper checks and balances are not instituted from the onset. It is imperative that an effective mechanism for the efficient resolution of allegations of racism and discrimination is clearly defined to all participants as well as those who will be closely monitoring the program.

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<sup>152</sup> Daron Hall, Sheriff, “Screening All Arrested Immigrants Pays Off,” *The Tennessean*, <http://www.tennessean.com/apps/pbcs.dll/article?AID=/20080914/OPINION01/809140369/1008> (accessed September 18, 2008).

<sup>153</sup> Karim Faheem, “Should Immigration Be a Police Issue?” *New York Times* April 29, 2007, 3. <http://www.nytimes.com/2007/04/29/nyregion/nyregionspecial2/29MORRISR.html?pagewanted=3&n=Top/Reference/Times%20Topics/Organizations/I/Immigration%20and%20Customs%20Enforcement,%20U.S> . (accessed August 3, 2008).

The assumption that police are inherently prone to violating civil rights is troubling. Outreach should also include educating the public about enforcement integrity and the mechanism for redress where civil rights violations are suspected. 287(g) cannot be successfully implemented without the necessary oversight and scrutiny to ensure that it is done so in concert with tenets of democracy and justice. The program should not be considered to be a remedy for ridding Utah communities of any “undesirable” ethnic or cultural elements. Such sentiment is not only inappropriate, but also illegal. Very clear protocols for reporting and investigating claims of racism and abuse must be made known to all participating officers as well as the general public.

Suggestions of public review boards have been suggested, in addition to an aggressive and responsive internal affairs unit. Training, more training and diligent oversight are critical. Marcy Forman, Director of ICE Office of Investigations, said this new program has helped extend its reach. “There is tremendous oversight in this program,” adding that the agency (ICE) would rescind agreements with any law enforcement agency that did not manage the program properly.<sup>154</sup>

When interviewed, Tony Yapias voiced concern about the effect that state and locals enforcing immigration law might have on the immigrant community, and the propensity of some police to go overboard with the authority and use it as a tool to harass the Hispanic community. Others who oppose immigration enforcement also support Mr. Yapias’ opinion that an inherent fear exists within the immigrant community. Mr. Yapias and others claim that the chilling effect will adversely affect the relationship between the police and the immigrant community who already fear the police. He recounted visits to his native Peru, where the federal police operate differently than U.S. law enforcement standards. Paying bribes or payments to the federal police is a common occurrence. The inherent distrust may be a reality, but the standard which U.S. law enforcement officers are expected to maintain are lofty and necessary to maintain the levels of civility that set America apart from others. The misstep of one can spoil the positive potential for many. Critics of immigration enforcement will be quick to point out how the authority was

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<sup>154</sup> Faheem, “Should Immigration Be a Police Issue?”

misused, thereby negating how the community and nation at large has been made safer. Even those who support the venture might be quick to withdraw support if even one allegation is substantiated.

Implementing a reliable system of checks and balances, and consistently following that system will foster an environment of trust and transparency, as described by author Stephen R. Covey in his book *The Speed of Trust: The One Thing that Changes Everything*. Covey emphasizes the importance of establishing trust in all aspect of societal interactions: market, organization, personal relationships and community relations.<sup>155</sup> The concept can be extended to a program that is as politically and socially sensitive as immigration enforcement, where allegations of racism and discrimination can be expected.

Few current 287(g) participants knew of any civil rights allegations and/or racial profiling complaints that their agencies have had to address since becoming involved in the program. Participants acknowledged the importance of having an established and well-publicized complaint process. As allegations emerge, trust can actually be enhanced as the chosen mechanism quickly addresses and either refutes or substantiates the claims. Even if an allegation is substantiated, trust will not necessarily erode. As Covey explains, trust can often be enhanced due to displays of correcting what an organization has discovered to be a problem. He cites the criticism from activists that Nike corporation received in the 1990s for not being socially responsible, based on the conditions in some of the plants of their foreign manufacturing partners. Instead of denying the problem, or attempting to conceal the reality, Nike's chairman took steps to right wrongs. He acknowledged the problem and took immediate corrective action. Trust that may have been lost was restored due to Nike's willingness to be responsive to its critics, learn from missteps and build on the strengths of the organization.<sup>156</sup> Having a clearly defined mechanism for redress in place prior to beginning 287(g) can go a long way in gaining the trust and support of the community and those who oppose the program. As stated by Nike's corporate leaders, "We want to build trust and enable stakeholders to judge us not on perception, but fact. Transparency is an essential tool in this process."<sup>157</sup> This applies directly to 287(g) application.

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<sup>155</sup> Covey, *The Speed of Trust*, 30.

<sup>156</sup> Ibid., 306.

<sup>157</sup> Covey, *The Speed of Trust*, 30.

## IX. ANALYSIS OF RESPONDENT INSIGHT: TOWARD MORE EFFECTIVE COLLABORATION TO ADDRESS TRANSNATIONAL THREATS

The survey revealed that 76% of Utah law enforcement leaders believe that *immigration enforcement should become more of a collaborative effort using combined state, local and federal resources and jurisdictional skill sets and expertise. This would allow state and locals to benefit from ICE training and institutional knowledge.* This is a strong indicator that the proposed model based on collaboration would be a viable solution in Utah. Implicit in SB 81 is a cooperative agreement between ICE and the state. Together with state and local partners, a solution can be developed that involves the genuine interest of all potential participants and synthesize those interests in novel ways, making the final result more than the sum of the parts.<sup>158</sup> Collaboration is most beneficial when organizations are interdependent and rely on each other to achieve a common goal or task.<sup>159</sup> To effectively address the state's need for increased immigration enforcement, collaboration provides an opportunity for the state and local police to coordinate their efforts with ICE to find ways to work together. Leadership is crucial. A leader who clearly expresses commitment to a vision of collaboration with other agencies can provide critical incentive for organizational members to engage in this "new" activity.<sup>160</sup>

Perhaps the most telling data that emerged from the survey of current 287(g) participants were the responses to the remedy or rue question: **Do you regret your department's decision to participate in 287(g)? Please briefly explain why or why not.** Few respondents voiced dissent with their department's decision to participate in 287(g). Those concerned about their involvement didn't necessarily disagree with partnering with ICE in combating criminal aliens, but recommended changes to the operational model. The resounding majority are proud of their involvement and express

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<sup>158</sup> Covey, *The Speed of Trust*, 203.

<sup>159</sup> Gail Fann Thomas, Susan Page Hovevar and Erik Jansen, "A Diagnostic Approach to Building Collaborative Capacity in Interagency Context." Acquisition Research, Naval Postgraduate School of Business and Public Policy. 2006, 2.

<sup>160</sup> *Ibid.*, 4.

satisfaction with results. As stated by one officer, “I feel that it is a valuable tool for any law enforcement entity. This has also built a long standing relationship between our agency and the Department of Homeland Security.” Another officer stated, “...to keep up with the ever changing law enforcement picture, agencies need to explore new ways to address issues of crime and illegal activities in their areas. Unfortunately, immigrants are increasingly committing more crimes.” The essence of this response captures the overwhelming majority of comments relating to this question: “... my job as a law enforcement officer is to protect the community with every tool I have at my disposal. This is the oath I swore when I put on the badge.”

Although candid about the shortfalls of the program and recommendations for operational and training revisions, the vast majority of 287(g) participants were very positive about their involvement and confident they were contributing to the safety of their communities. Many related significant benefits and positive impacts resulting from their departments’ participation in 287(g). Common themes of enhanced abilities to identify and remove foreign threats, a decrease in crimes in the community, a sense of pride in safeguarding their communities, and extreme satisfaction in the cooperative relationships forged with their ICE partners rang true.

#### **A. A DIFFERENT GAME**

287(g) entails “playing a different game.” Immigration enforcement is understandably unfamiliar territory for state and local police. Keeping the enforcement focus very limited would help prevent immigration enforcement from becoming a significant distraction, which was cited as a reason for not wanting to add immigration enforcement to state and local enforcement responsibilities.

The proposed model offers a new approach showing the mutual benefit to each participant in the 287(g) venture. The strategy entails:

- Minimizing resources necessary for participation
- Conducting a proactive outreach campaign to inform immigrant community representatives and advocacy groups of the scope and mission of Utah immigration enforcement priorities
- Assisting state and locals to comply with legislative mandates with a proactive strategy starting conservatively and encouraging slow and reasonably paced development
- Targeting criminal organizations, not administrative violators
- Complimenting local assets with federal institutional knowledge and experience
- Promoting voluntary, not coercive, participation
- Nurturing competent and judicious use of this new public safety and homeland security law enforcement tool.

ICE readily maneuvers around local politics and the inherent fear that immigrants have of federal immigration authorities, which is an inescapable cultural reality. ICE accepts that its mere existence poses a threat to immigrants. Discussion with enforcement leaders indicates that state and local police are more inclined to engage in immigration enforcement if they believe the venture is a win-win endeavor. This entails improving their public image, optimizing their resources, appeasing local political entities, and increasing their ability to serve and protect their constituency — including the immigrant community — without the chilling effect becoming an overly prohibitive factor.

This can be accomplished by tailoring enforcement strategies that factor in the primary concerns of those who delve into this specialized enforcement arena. *Strategic Planning for Public and Nonprofit Organization*, by John M. Bryson, is based on the premise that leaders and managers of organizations must be effective strategists in order to fulfill their respective missions, meet their mandates, satisfy their constituents, and create



public value in the years ahead.<sup>161</sup> This strategic mission is directly applicable to the post-9/11 law enforcement environment, where state and local police departments are adapting to counter transnational criminals that are transiting through or settling into their communities. This undertaking requires interacting with local leaders, the community, enforcement entities, the private sector and even the immigrant community to articulate the enforcement mission, focus and intentions. Such engagement will foster relationships and common understanding — even if the pool of stakeholders comprises those of opposing perspectives.

## **B. A FUNCTIONING COLLABORATIVE MODEL**

In April of 2008, this researcher accompanied ICE managers, including James Pendergraph the ICE Director of the Office of State and Local Coordination, to Phoenix, Arizona. The group closely observed the operations of *Illegal Immigration Prevention and Apprehension Co-op Teams* (IIMPACT),<sup>162</sup> a multi-agency, multi-authority team comprised of federal (ICE), state and local enforcement resources. IIMPACT was organized as a result of state immigration-related legislation proposed in Arizona, not unlike Utah's Senate Bill 81.

With a ten million dollar boost, compliments of insightful and responsive Arizona Governor Janet Napolitano, who was recently selected by President-elect Obama to head the U.S. Department of Homeland Security under his administration, the Arizona Department of Public Safety (DPS) organized and coordinated an investigative team comprised of local, state and federal enforcement assets. The team was organized as a result of Governor Napolitano's support and determination to facilitate enforcement

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<sup>161</sup> John M. Bryson, *Strategic Planning for Public and Nonprofit Organizations: A Guide to Strengthening and Sustaining Organizational Achievement*, 3<sup>rd</sup> ed. (San Francisco: John Wiley & Sons, 2004), xi.

<sup>162</sup> Executive Summary, "IIMPACT Arizona!" provided by Arizona Dept. of Public Safety Commander Timothy Chung, 2008, 1.

efforts to thwart serious immigration-related criminal activity in Arizona. This enforcement model is having remarkable success in combating the criminal element associated with illegal immigration.<sup>163</sup>

As the name implies, state, local and federal enforcement agencies combine forces to *impact* international human smuggling organizations operating in Arizona. Another sub-unit within IIMPACT is the Arizona Fraud Identification Team (AFID), which focuses primarily on countering the proliferation of fraudulent identity documents. IIMPACT and AFID evolved as state and local enforcement agencies rallied to develop strategies in response to immigration-related legislation passed in 2006.<sup>164</sup> The team came to life when Governor Napolitano allocated sufficient funding for the enforcement efforts. Arizona DPS Commander Steven Wells contrived the concept, creating investigative squads comprised of personnel from the Arizona Department of Public Safety (DPS), Immigration & Customs Enforcement (ICE) and the Phoenix Police Department. The mission of this collaborative, multi-jurisdictional team was to *deter, disrupt, and dismantle criminal organizations profiting from illegal immigration*.<sup>165</sup> The enforcement model provides investigative resources and removal assistance to local jurisdictions plagued by crimes committed by illegal aliens. This multi-agency squad is staffed with officers who have successfully completed the 287(g)<sup>166</sup> training, allowing

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<sup>163</sup> Timothy Chung (Commander, Arizona Department of Public Safety), interviewed by author, Phoenix, Arizona, April 3, 2008.

<sup>164</sup> House Bill 2807 – Immigration: Local Enforcement, Arizona House of Representatives, 48th Legislature – 2nd Regular Session, [http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/48leg/2R/comm\\_min/House/022608CMMMA.DOC.htm](http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/48leg/2R/comm_min/House/022608CMMMA.DOC.htm) (accessed April 30, 2008).

<sup>165</sup> Executive Summary, “IIMPACT Arizona!”

<sup>166</sup> The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA). This authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement (MOA), provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers. The cross-designation between ICE and state and local patrol officers, detectives, investigators and correctional officers working in conjunction with ICE allows these local and state officers the necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling and money laundering; it further provides increased resources and support in more remote geographical locations. *Section 287(g) of the Immigration and Nationality Act* <http://www.support287g.com/id2.html> (accessed August 4, 2008).

for broader enforcement potential. IIMPACT officers investigate property, financial and violent crimes associated with illegal immigration and human smuggling in the greater Phoenix and Maricopa County areas.

Key to the strategy of soliciting support for the model is showing a similar immigration enforcement model tailored to meet the needs of Utah. Like Arizona's IIMPACT, Utah agencies can experience this same success and enhance the security and safety of the communities they have sworn to, and are expected to protect. Coupled with the passage of SB 81, and acknowledging the federal government's deficiencies in securing U.S. borders, the timing is right to invite those Utah law enforcement leaders, who are largely shouldering the nation's failed immigration policies, to join forces with ICE in what could be a mutually agreeable and politically feasible solution.

### **C. AGREEMENTS OF COOPERATION IN COMMUNITIES TO ENHANCE SAFETY AND SECURITY (ACCESS)**

When asked to choose the statement that most accurately reflects their opinion about how Utah law enforcement agencies should proceed in response to SB 81 to achieve optimal results with limited resources, 90% responded with *“Reach out to ICE for assistance in developing immigration enforcement strategies. A collaborative multi-disciplinary, multi-jurisdictional approach would be a force multiplier.”*

ICE realizes the importance of enlisting the support and cooperation of their state and local enforcement partners, and has availed ICE resources, expertise and statutory authority. In recent years, ICE has vigorously promoted the “Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS).” The ACCESS program is available to all state and local agencies that seek broader and more creative approaches to combating the transnational threats that are ever encroaching into U.S. communities — threats that go beyond immigration enforcement. ICE offers a variety of services with the goal of sharing resources and information in the most effective manner possible.<sup>167</sup> The 287g program is only one component under the ICE ACCESS umbrella of services and

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<sup>167</sup> U.S. Immigration and Customs Enforcement, “Partners.” <http://www.ice.gov/partners/enforce.htm> (accessed October 7, 2008).

programs offered for assistance to local law enforcement officers. ACCESS provides a mechanism for state and local police to expand their investigative horizons and more effectively counter transnational crimes that seep into their communities. The combined efforts of ICE and other law enforcement agencies further the ability to combat the threats that ICE alone cannot sufficiently remedy. The following are other tools, remedies, programs and opportunities available to state and local law enforcement agencies in response to the widespread interest from local law enforcement agencies who have requested ICE assistance through the 287(g) program.

## **1. Asset Forfeiture**

Criminal organizations conducting cross-border crimes earn illicit proceeds that sustain their criminal activity and fund other criminal endeavors. Asset forfeiture laws allow ICE agents to seize and forfeit these illicit proceeds and other criminally derived assets. ICE uses asset forfeiture to disrupt and dismantle these organizations across all ICE investigative areas, such as money laundering, bulk cash smuggling, worksite enforcement, and alien and drug smuggling investigations. The proceeds of these forfeitures are deposited into the Treasury Forfeiture Fund, and are returned to member agencies to pay for a variety of important law enforcement operations.<sup>168</sup>

## **2. Border Enforcement Security Task Forces (BEST)**

Border Enforcement Security (BEST) Task Forces apply the concept of collaboration of DHS and other law enforcement agencies to develop a comprehensive approach to identify, disrupt and dismantle criminal organizations posing significant threats to border security. BEST Forces are currently located near borders in Arizona, California, and Texas.<sup>169</sup>

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<sup>168</sup> U.S. Immigration and Customs Enforcement, “Partners.”

<sup>169</sup> Ibid.

### **3. Criminal Alien Program (CAP)**

The Criminal Alien Program (CAP) focuses on identifying criminal aliens who are incarcerated within federal, state and local facilities, and ensuring that they are not released into the community by securing a final order of removal prior to the termination of their sentences.<sup>170</sup> The Weber County Sheriff's Department is actively involved in this aspect of ACCESS as they exercise their 287(g) authority to intercept and process more foreign national criminals for deportation who are booked into their facility. The Weber County booking area is now equipped with the biometric data base and ICE indices which allows 287(g) trained and cross-delegation deputies to identify via biometrics criminal aliens who might have otherwise averted detection by using false names. Weber County now has round the clock coverage of the jails to mitigate opportunities for dangerous criminal aliens to bond out and disappear. 287(g) Jail Enforcement officers<sup>171</sup> will greatly reduce the number of criminals released back into Utah communities.

### **4. Customs Cross-Designation (Title 19)**

Title 19 United States Code 1401 (I) allows for federal, state, local and foreign law enforcement officers who participate primarily in U.S. Immigration and Customs Enforcement task force operations to be cross-designated as "Customs Officers" and be granted the authority to enforce U.S. customs law. These cross-designated task force officers supplement ICE's investigative mission of combating narcotics smuggling, money laundering, human smuggling and trafficking, and fraud related activities to disrupt and dismantle criminal organizations threatening U.S. borders. They enhance ICE's ability to work more closely with its foreign law enforcement counterparts, thus creating secure relationships and cooperation between the U.S. and other countries.<sup>172</sup>

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<sup>170</sup> U.S. Immigration and Customs Enforcement, "Partners."

<sup>171</sup> In the Jail/Prison Model, state and local correctional officers who are 287(g) cross-designated can determine the alienage and deportability of inmates who are still serving time for their state or local criminal convictions. While illegal aliens are detained in these local facilities, cross-designated officers can process them for administrative removal to be affected upon completion of their criminal sentence. All contact and interaction with criminal aliens would take place within the detention facility's confines.

<sup>172</sup> U.S. Immigration and Customs Enforcement, "Partners."

## **5. Document and Benefit Fraud Task Forces**

In April 2006, ICE created Document and Benefit Fraud Task Forces (DBFTFs) to target, dismantle and seize illicit proceeds of the criminal organizations that threaten national security and public safety by exploiting the immigration process through fraud. The DBFTFs provide an effective platform from which to launch anti-fraud initiatives using existing manpower and authorities. Through DBFTFs, ICE partners with other federal agencies, state and local law enforcement. These task forces focus their efforts on detecting, deterring and disrupting both benefit fraud and document fraud. DBFTFs were initially launched in Atlanta, Boston, Dallas, Denver, Detroit, Los Angeles, New York, Newark, Philadelphia, St. Paul and Washington, DC. In April 2007, additional task forces were added in Baltimore, Chicago, Miami, Phoenix, San Francisco and Tampa, bringing the nationwide total to 17.<sup>173</sup>

## **6. Equitable Sharing/Joint Operations**

Asset forfeiture has been, and remains, a highly effective tool for taking the profit out of crime. State, local, and foreign law enforcement support of federal investigative and prosecutorial initiatives is essential, and the sharing program has proved invaluable in fostering cooperation among the law enforcement agencies. In FY 2006, ICE coordinated payments of \$5.65 million in overtime costs for state and local police officers working alongside ICE agents throughout the U.S., and provided \$43.46 million in direct payments of equitable sharing of forfeited assets to 362 state and local agencies, four federal agencies and one foreign government. These payments allow agencies to cooperatively combat crimes in their jurisdictions through joint operations with ICE, and have increased goodwill and partnership with these agencies.<sup>174</sup>

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<sup>173</sup> U.S. Immigration and Customs Enforcement, “Partners.”

<sup>174</sup> Ibid.

## **7. Fugitive Operation Teams (FOTs)**

The primary mission of FOTs is to identify, locate, apprehend, process, and remove fugitive aliens<sup>175</sup> from the United States, with the highest priority placed on those fugitives who have been convicted of crimes, either in the U.S. or in their native countries. Further, FOTs' goal is to eliminate the backlog of fugitives and ensure that the number of aliens deported equals the number of final orders of removal issued by the immigration courts in any given year. In order to effectively meet its goal of removing all removable aliens, ICE relies on the assistance of all federal, state, and local law enforcement agencies. One of the ways that outside law enforcement agencies can assist the FOTs is by participating in local Joint Fugitive Task Forces.<sup>176</sup>

## **8. Intellectual Property Rights Coordination (IPR) Center**

In 2000, the ICE-led National IPR Center, located in Washington, D.C., was created. The IPR Center is the U.S. Government's central point of contact in the fight against violations of intellectual property rights and the flow of counterfeit goods into the U.S. The Center operates as a multi-agency facility responsible for coordinating a unified U.S. Government response regarding IPR enforcement issues. Core staffing is provided by investigative and intelligence personnel from ICE. Particular emphasis is given to protecting the public health and safety of U.S. consumers, investigating major criminal organizations engaged in transnational intellectual property crimes, and pursuing the illegal proceeds derived from the manufacture and sale of counterfeit merchandise.<sup>177</sup>

## **9. Law Enforcement Support Center (LESC)**

The mission of the LESL is to protect the United States and its people by providing timely accurate information and assistance to the federal, state and local law

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<sup>175</sup> An ICE fugitive is defined as an alien who has failed to leave the United States based upon a final order of removal, deportation, or exclusion; or who has failed to report to ICE after receiving notice to do so.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

enforcement community. The LESC serves as a national enforcement operations center by providing timely immigration status and identity information to local, state and federal law enforcement agencies on aliens suspected, arrested or convicted of criminal activity. The LESC operates 24 hours a day, seven days a week assisting law enforcement agencies with information gathered from eight DHS databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III) and other state criminal history indices.<sup>178</sup>

## **10. Operation Community Shield**

In February 2005, ICE launched Operation Community Shield, a national law enforcement initiative that brings all of ICE's law enforcement powers to bear in the fight against violent transnational gangs that are threatening the public safety of our communities. Utah's 2008 participation in this national gang initiative was closely monitored for this research. Operation Community Shield is part of a comprehensive approach of working with law enforcement partners at the federal, state, and local level to combat transnational gangs. Under this initiative, ICE is using its broad authorities, both criminal and administrative, against gangs and gang members. This authority includes conducting investigations involving narcotics and human smuggling, money laundering and racketeering violations. The goal of Operation Community Shield is to identify, locate, arrest, and prosecute gang members and associates and ultimately disrupt and dismantle gang organizations. Initially, the focus of the effort was the Mara Salvatrucha organization, commonly referred to as "MS-13," one of the most violent and rapidly growing of these street gangs. In May 2005, ICE expanded Operation Community Shield to include all criminal street gangs that pose a threat to national security and public safety.<sup>179</sup>

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<sup>178</sup> U.S. Immigration and Customs Enforcement, "Partners."

<sup>179</sup> Ibid.



## **11. Operation Firewall**

The smuggling of bulk currency out of the United States has become a preferred method of moving illicit proceeds across U.S. borders. To combat the increasing use of Bulk Cash Smuggling (BCS) by criminal organizations, the ICE Financial, Narcotics and Public Safety Division and the CBP Office of Field Operations, Tactical Operations Division, developed a joint strategic BCS initiative referred to as Operation Firewall, which began in August 2005, and has continued to expand through FY 2006 and FY 2007. Operation Firewall has directly resulted in the seizure of over \$80 million in U.S. currency and negotiable instruments of suspected narcotics and other criminal proceeds.<sup>180</sup>

## **12. Operation Predator**

Operation Predator is a program designed to identify, investigate, and, as appropriate, administratively deport child predators. ICE routinely coordinates and integrates investigative efforts with foreign law enforcement in order to identify, arrest and prosecute the principals who are involved in international pedophilic groups or who derive proceeds from commercial child exploitation ventures.<sup>181</sup> ICE currently partners with the Utah Attorney General's office to more effectively combat the scourge of sexual exploitation of children traced to victims and perpetrators in Utah.

ICE is a trailblazer in instituting programs to foster exactly what the 9/11 commission advocated to decrease opportunities for foreign strikes on U.S. soil. As the Commission declared, state and local law enforcement agencies need more training and work with federal agencies so they can cooperate more effectively in homeland security efforts.<sup>182</sup> The merging of state law with the complexities of immigration law presents an unnerving challenge. SB 81 has received mixed reviews from state law enforcement agencies, which now feel pressured because of the inherent responsibility to act on the

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<sup>180</sup> U.S. Immigration and Customs Enforcement, "Partners."

<sup>181</sup> Ibid.

<sup>182</sup> *The 9/11 Commission Report*, 390.

immigration enforcement built into this law. 69% of Utah enforcement leaders believe that the federal government should be primarily responsible for immigration enforcement. Even those who favor the states taking a leading role in immigration enforcement feel little comfort in handling immigration problems themselves, recognizing the complex legal, cultural and social dynamics associated with immigration enforcement. ACCESS programs can alleviate this fear by enlisting ICE support in designing an enforcement model to fit the community, county or state's needs. ACCESS programs serve to merge federal and state assets, open and sustain channels of intelligence sharing, and afford state and local communities the added means to combat threats that have historically fallen under federal jurisdiction.

As stated by the 9/11 Commission in their assessment of factors contributing to the attack, "We learned that the institutions charged with protecting our borders, civil aviation, and national security did not understand how grave this threat could be, and did not adjust their policies, plans, and practices to deter or defeat it...We learned of pervasive problems of managing and sharing information across a large and unwieldy government that had been built in a different era to confront different dangers."<sup>183</sup> The reality of transnational threats can no longer be exclusively addressed by federal enforcement assets. ICE has paved the way for the creation of partnerships critical to ensuring optimal enforcement abilities. ICE agents and officers will meet with agencies requesting ICE ACCESS assistance to assess local needs and to draft appropriate plans of action. Based upon these assessments, ICE and local agencies will determine which type of partnership is most beneficial and sustainable before entering into an official agreement. Law enforcement agencies interested in reviewing the enforcement programs under the ICE ACCESS program are encouraged to call their local ICE office or visit [www.ice.gov](http://www.ice.gov) for more information.<sup>184</sup>

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<sup>183</sup> *The 9/11 Commission Report*, xvi.

<sup>184</sup> U.S. Immigration and Customs Enforcement, "Partners."

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## **X. INNOVATION THROUGH COLLABORATION**

A motivational poster entitled “Innovation” is mounted in the hallway of the Eastern Management Development Center in Shepherdstown, West Virginia. The caption reads, “The best way to predict the future is to create it.”<sup>185</sup> Utah citizens expect change in the future. Such demand is reflected by recent legislative measures to remedy immigration-related crime such as SB 81. A new approach is warranted, considering the limited local, state and federal resources. Collaboration of these respective jurisdictions can improve capabilities of countering transnational threats that encroach on the nation’s unsuspecting and under-resourced areas.

It is proposed that ICE join forces with state and local law enforcement agencies to establish multi-agency, multi-jurisdictional immigration enforcement teams (herein referred to as “the team”) constituting multi-agency partnerships. Team members will have the necessary statutory authority to dismantle complex organizations within Utah focusing exclusively on serious immigration-related crimes that erode the nation’s security. The Joint Terrorism Task Force model was implemented in the 1980s to involve state and local enforcement entities in the FBI’s efforts to counter terrorism. This specialized team would similarly merge enforcement disciplines to counter dangers posed by transnational criminals. Illegal immigration and attendant criminal activity warrants the specialized delegation of authority to optimize community protectors’ ability to respond appropriately.

### **A. STATE-SPONSORED SUPPORT AND FUNDING**

Participation would demonstrate responsiveness to Utah citizens, who are demanding that something be done by enforcement entities to remedy the criminal activity associated with illegal immigration. Regardless of the fate of SB 81, this enforcement strategy will remedy the “broken windows” theory for law enforcement in

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<sup>185</sup> Alan Kay, Success Wallpapers. “The best way to predict the future is to create it.” <http://www.successwallpapers.com/wallpapers/0021-innovation.php> (accessed October 6, 2008).

Utah, where criminal aliens have sought refuge. Successful implementation requires the following from State and local enforcement leaders:

- Recognize the need for immigration enforcement expertise in one's area of responsibility and a willingness to allocate minimal resources to the venture
- Cooperatively formulate clear objectives and define the scope of involvement
- Solicit ideological support and funding from local political leaders
- Develop and maintain open lines of communication with the immigrant community and advocates.

ICE agents related that intelligence gathered from street sources indicates that, due to the recent multi-jurisdictional surge, gang members are more cautious, and therefore, less prolific in committing acts of gang related violence. The “word” that ICE is partnering with the local police has forced gang members to “stay low,” realizing that an encounter with local cops could quickly translate into an encounter with ICE. Consequently, as gangs intentionally minimize their exposure, their potential for violence decreases. Jessica M. Vaughan is a Senior Policy Analyst at the Immigration Studies Center. Her research has revealed that immigration law enforcement has been a key ingredient in the success of criminal gang suppression efforts throughout the U.S. Vaughn encourages lawmakers to strongly consider steps to address the illegal immigration problem, giving high priority to institutionalizing partnerships between state and local law enforcement agencies and ICE. She advocates the following policy recommendations tailored to combating state-specific immigration problems, which can be directly applied to collaborative efforts with ICE in Utah:<sup>186</sup>

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<sup>186</sup> Jessica Vaughan. Center for Immigration Studies. “Immigration Enforcement Disrupts Criminal Gangs in Virginia: States Should Expand Involvement of Local LEAs.” <http://www.cis.org/articles/2008/gangrelease.html> (accessed October 27, 2008).

- A statewide approach to address illegal alien crime is most beneficial and effective, provided it preserves the ability of localities to use their authorities for further efforts as needed.
- Require all law enforcement agencies in the state to screen all those in custody for alienage, verify status, and notify ICE as appropriate. All crime databases, especially gang records, should record accurate information on alienage and status.
- Expand the 287(g) and Criminal Alien Programs to address the ICE attention gap and increase criminal removals. Ideally, all gang and drug task forces whose personnel encounter non-citizens should include either an ICE agent or a 287(g)-trained local investigator.
- Increase detention space to accommodate those slated for removal. ICE also offers a “rapid repatriation” program to speed removals and address space crunches.
- All law enforcement officers in Utah should receive basic introductory training in immigration law (not necessarily 287(g)), to assist in questioning foreign nationals and in recognizing documents, and to avoid procedural mistakes or rights violations.
- Measures to prevent illegal employment will help prevent criminal aliens from embedding themselves in Utah communities and discourage illegal settlement in general.<sup>187</sup>

Tapping into already strained budgets is always a concern. The option for state and local, police to participate in immigration enforcement — voluntary participation — should be considered by Utah’s legislative committee in determining the funding allocation and budgetary considerations in anticipation of SB 81’s effective date of July 2009. State support and funding for this model would empower those participating

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<sup>187</sup> Vaughan. “Immigration Enforcement Disrupts Criminal Gangs in Virginia: States Should Expand Involvement of Local LEAs.”

agencies that will assume the responsibility of pioneering this necessary enforcement endeavor. Sponsoring the salaries of a select few and publicizing the Team's successes will serve to appease the public's demand for increased enforcement and downplay the expectation of all agencies to actively pursue immigration enforcement. Limited participation can allow this nascent team to establish itself as a response to Utah citizens' concerns about immigration crimes while taking a controllable, limited and targeted enforcement approach.

**B. PROPOSED MODEL: UTAH ANTI-IMMIGRATION CRIME TEAM (UACT)**

It is proposed that an organizational structure similar to Arizona's IIMPACT, comprised of state, local and federal personnel be combined to form the *Utah Anti-Immigration Crime Team* (UACT). In an ever-changing environment of overlapping interests, a collaborative approach is necessary. When surveyed, state and local enforcement leaders expressed concern about civil liability if they were expected to delve into immigration enforcement. Participants would be trained and crossed-delegated with 287(g) authority, empowering members to act in unison with undisputed authority to alleviate gray area concerns about jurisdiction and statutory authority. State and local team members would be issued 287(g) credentials upon completion of the requisite training. This specialized team could focus their efforts on interior immigration enforcement, combating immigration crimes such as fraudulent document production and distribution, alien smuggling and transnational gang activity — all crimes present in Utah and only receiving cursory attention due to ICE's limited manpower. ICE agents in Utah are unable to place concerted emphasis on these crimes, as they are spread thin with other

worthwhile ICE enforcement priorities.<sup>188</sup> A blending of cultures will enable more comprehensive enforcement coverage for Utah, deterring the criminal element supporting illegal immigration from taking irreparable hold in Utah.

UACT teams, comprised of ICE Special Agents and cross-delegated state and local officers, could incorporate any or all of the following investigative functions as threats arise in Utah communities:

- Violent Fugitive Apprehension Squad (VFAS): The law enforcement agency (LEA) personnel assigned to the VFAS team are charged with identifying high-risk felons: illegal alien criminal fugitives who are wanted for crimes or offenses posing a significant threat to public safety.
- Criminal Investigation Section (CIS): The LEA personnel assigned to CIS by statute are charged with identifying criminal enterprises and other forms of organized criminal activities.
- Anti-Gang Team: The LEA personnel assigned to the anti-gang team engage in law enforcement actions targeting transnational gang activity, transnational gang intelligence gathering and multi-jurisdictional operational coordination.
- Drug Enforcement Team: The LEA personnel assigned to various drug enforcement teams are involved with illegal trafficking in narcotics investigations involving suspected illegal aliens and organizations identified. The focus would be to identify, disrupt, and dismantle organizations by targeting bulk currency and controlled substance transportation groups.

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<sup>188</sup> U.S. Immigration and Customs Enforcement (ICE) was established in March 2003 as the largest investigative arm of the Department of Homeland Security. ICE is comprised of five integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities. DHS ICE Office of Investigations uses its legal authority to investigate issues such as immigration crime, human rights violations, and human smuggling; narcotics, weapons and other types of smuggling; and financial crimes, cyber crime and export enforcement issues. U.S. Immigration and Customs Enforcement, News Release “*Officers from two Florida law enforcement agencies begin 287 (g) immigration enforcement training. Rigorous 4-week training at Federal Law Enforcement Training Center in Charleston, SC,*” (Washington D.C.: ICE, July 22, 2008), 1.  
<http://www.ice.gov/pi/nr/0807/080722miami.htm> (accessed August 3, 2008).



- Community Action Teams (CAT): The LEA personnel assigned to CAT team would be charged with assisting local authorities in Salt Lake City or any other Utah community that request assistance due to pervasive criminal activity occurring in hot spots within their communities.<sup>189</sup> These cross-delegated 287(g) officers could be deployed to provide investigative resources and removal assistance where immigration-related criminal activity has been detected.
- Document Fraud Teams: The LEA personnel assigned to the document fraud team investigate the production, distribution and use of fraudulent identification documents, including driver's licenses, social security documents and immigration documents.

Teams would be exponentially productive, as each participating agency, as investigative and operational needs dictated, could be tapped for intelligence and resources such as undercover operatives, informants, surveillance assets, intelligence analysts, etc. The following composition is an example of how a team could be represented by Utah agencies:

- Two ICE Special Agents
- One Police Officer/Detective
- One County Deputy Sheriff
- Two Highway Patrol Troopers

Critical to the success of this team would be the establishment of trust — the willingness to recognize the expertise of the “other” and appreciate how one without the other renders the team less effective and less capable of satisfying the public need of optimal security. Accountability and oversight would also be critical. Metrics for success must be mutually established and monitored to ensure acceptable productivity levels as well as consistency in mission and focus. Given the latitude that the team would need in

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<sup>189</sup> Immigration and Customs Enforcement Memorandum of Agreement (MOA) template relating to Task Force negotiations and coordination with state and local 287(g) participants, 2008.

order to be mobile and responsive to the needs of the state at large, strict geographical operating guidelines would need to be established by the participating agencies. The multi-jurisdictional collaboration would serve as a performance multiplier, creating synergy where the whole is more than the sum of its parts.<sup>190</sup>

The team will require supervision, and ICE will provide day in and day out management for accountability and oversight purposes, but a more decentralized organization would distribute authority of local Police Chiefs and Sheriffs to utilize the team at their discretion to address the needs of their respective communities. When surveyed, 69% of Utah law enforcement agency heads indicated that participation in immigration law enforcement is inherently a local decision that must be made by a Police Chief, Sheriff or department head working with elected officials, community leaders and citizens. This enforcement model allows for that governing principle. The permissive nature of this enforcement team appeals to those departments who recognize the need and value of participation.

The Team should concerted focus on serious crimes involving illegal aliens, with administrative arrest occurring only in furtherance of intelligence gathering efforts to leverage co-conspirators, or to more expeditiously remove an illegal alien suspected of serious criminal involvement where evidence to support criminal prosecution is lacking. Enforcement actions where any “groups” of administrative arrests are made will be done so as strategy in furtherance of a larger criminal investigation. The number of immigration bed spaces in Utah, which are primarily designated for jail releases, will help to ensure that UACT officers/agents abide by a strict scope of enforcement. This collaborative concept also presents a significant overture in response to SB 81 and the citizens of Utah who expect and deserve to be safeguarded. Even if only a few officers are cross-designated with immigration authority and work along with ICE agents to concerted address organized immigration related crime, the networking and intelligence gathering potential can improve.

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<sup>190</sup> Covey, *The Speed of Trust*, 20.

Homeland security expert James J. Carafano, Ph.D., advocates strongly for cross-delegating local police with immigration authority, acknowledging that ICE does not have adequate resources to address criminal aliens. Effective interstate criminal investigations require close cooperation of federal, state, and local investigators. Carafano posits that Section 287(g) provides strong protection to states and their law enforcement officers while requiring that well-trained officers already on the ground conduct immigration investigations. It also allows state and local governments to tailor programs to meet their unique circumstances and requirements. Building on Section 287(g) is Congress's best bet to improve immigration enforcement by engaging state and local law enforcement.<sup>191</sup> UACT will serve to accomplish that end.

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<sup>191</sup> James J. Carafano, "Build on Section 287(g) of the Immigration and Nationality Act to Boost State and Local Immigration Enforcement," Heritage Foundation (September 2006): [www.heritage.org/Research/HomelandSecurity/wm1212.cfm](http://www.heritage.org/Research/HomelandSecurity/wm1212.cfm) (accessed December 27, 2007).

## **XI. CONCLUSION**

Based on the data gleaned from this research, not all law enforcement agencies should attempt such an undertaking. There are certainly factors weighing heavily against involvement in immigration enforcement, and there are factors that strongly support an agency's participation in such a venture. This research set out to answer the following questions:

1) What types of violations should be prioritized by state and local law enforcement agencies to avoid a flooding of the jails and court system with mere administrative violations?

Findings: In response to the adverse impacts of illegal immigration suffered by the state of Utah, both in terms of crime, quality of life and economics, the public voice demands and deserves action. The dangerous criminal element readily coming across the U.S. border and settling into U.S. communities poses significant challenges to law enforcement agencies. These illegal alien criminals are becoming progressively more brazen in their assertion of entitlement to be here, and more violent and sophisticated in their criminal ways. Felony crimes that support, either directly or indirectly, illegal alien infrastructure, and crimes with a possible link to terrorism, such as drug trafficking, bulk cash smuggling, document and identity fraud, gang activity, human smuggling and trafficking are a priority. Administrative violations should be pursued when it is suspected that an illegal alien is involved in criminal activity, but where insufficient evidence exists to support criminal charges. Administrative charges can also be used to leverage witnesses or suspected co-conspirators reluctant to cooperate in furtherance of an investigation into priority criminal activity. Finally, vital to the development of any local immigration-related enforcement strategy is coordination with ICE Detention and Removal Office to determine its capabilities and capacities of housing illegal aliens.

2) Can local law enforcement agencies find an acceptable balance between ensuring the overall public safety and security of the community at large while mitigating the potential for a “chilling effect” which might further alienate the immigrant community?

Findings: The chilling effect is a primary concern deterring many law enforcement agencies from engaging in immigration enforcement. This research found no compelling empirical evidence to support that state and local involvement in immigration enforcement will unduly prevent or discourage victims or witnesses of crimes from coming forward. Nevertheless, the concern for this phenomenon is pervasive and cannot be ignored in developing local immigration enforcement strategies. There is no way to ensure that those here illegally will ever be completely trusting of the police. As the survey strongly indicates, 95% of Utah police believe that the safety of the community should be the primary concern, and immigrants, legal or not, are part of the community that local agencies are sworn to protect. Current 287(g) participants and immigrant advocates provided encouraging data that a chilling effect can be mitigated by community outreach and cross-culture communication between the enforcement community and the immigrant community. In short, outreach can serve to protect the community at large.

3) Is it possible to enforce immigration law while attempting to foster trust with the local immigrant community?

Findings: Yes. Although some within the immigrant community will always be leery of law enforcement for cultural reasons or by virtue of their illegal status, a level of trust can be fostered as the immigration enforcement scope and mission is clearly articulated. Developing and sustaining open channels of communication with civic leaders and advocacy groups is vital to trust building. Concerns such as the chilling effect can be mitigated by delineating clear internal enforcement objectives, and coordinating and sustaining community outreach efforts publicizing the team’s focused enforcement efforts. This is primarily a function of leadership and trust, which are essential to successful multi-jurisdictional collaborations. This mission should be communicated to

the community at large. Broadcasting the existence and mission of the team will alleviate concerns of the immigrant community and deter criminals who choose Utah as their backdrop of criminal activity. Utah Hispanic community advocate Tony Yapias related that, in many instances, illegal aliens are leaving Utah and self-deporting to Mexico because of recent collaborative ICE and local police enforcement actions.<sup>192</sup> Immigration enforcement efforts have a significant impact on the illegal alien community far beyond those that the police apprehend.

4) Is there an enforcement model, or some semblance thereof, that has been implemented elsewhere that would be most effective in Utah?

Findings: This research concludes that not all agencies should tackle immigration enforcement, but that the option to participate, and a mechanism to do so, should be readily available. This researcher proposes establishing UACT; a multi-disciplinary approach to combating the crimes associated with illegal immigration provides a viable solution. Arizona's IIMPACT program is experiencing impressive results, and is a vanguard for a multi-disciplinary approach to countering the crimes associated with illegal immigration. Similar to Arizona's IIMPACT team, UACT will empower local Utah law enforcement agencies that choose to engage in immigration enforcement to more comprehensively satisfy the demands of Utah citizens for increased immigration-related efforts. Utah agencies can experience the same level of interagency collaboration currently taking place in Arizona.

Successful implementation of 287(g) and other supplemental ICE ACCESS programs provide the protectors of our communities, state and local police, with another enforcement tool when encountering illegal aliens who engage in criminal activities. Successful 287(g) partnerships result as information is shared, communication is constant and participants come to a clear understanding of their scope of authority and enforcement mission. Establishing UACT offers a middle ground "optional" approach in communities where immigration-related crimes pose threats worthy of an innovative approach.

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<sup>192</sup> Yapias, interview.

As U.S. immigration policies will likely remain welcoming, our nation will remain vulnerable to transnational criminals and terrorists who will invariably attempt to exploit weaknesses and loopholes in the system. It is critical to provide state and local officers with additional tools to ferret out the dangerous foreign elements making their way into the nation's interior. Having explored the philosophical, political and practical aspects of merging immigration enforcement into the state and local arena, it is important to recognize the difficulties that such a venture presents. This analysis presented possible strategies, tactics and enforcement models to counter the concerns that have deterred many local agencies from joining forces with immigration officials. To that end, collaborative local, state and federal enforcement efforts are vital in preventing foreign threats from operating unfettered within our nation's communities. Collaboration of cultures and authorities will bridge the gap between local and federal disciplines and offer a legally and politically sound enforcement strategy to more effectively secure our communities, and in turn, the homeland.

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